

TRYALS
FOR
High-Treason,
AND
OTHER CRIMES.
WITH
PROCEEDINGS
ON
Bills of Attainder,
AND
IMPEACHMENTS,
For Three Hundred Years past.

To which are prefix'd,
A PREFACE, giving an Account of
the Nature and Usefulness of the WORK.
AND
An ALPHABETICAL TABLE of
the respective PERSONS Try'd, and the
Points of Law Debated and Adjudg'd.

*By the SAME HAND that prepared the Folio Edition
for the PRESS.*

PART III.

L O N D O N :
Printed for D. Browne, G. Strahan, W. Mears, R.
Gosling, and F. Clay. M.DCC.XX.

T R Y A L S

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THE
TRIALS

Contain'd in
The Trial of William Arkins for High Treason, in
conjunction with the Popish Orders,
31 Car. 2. 1679.

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court, Rector of London, John Fenwick, Procu-
rator of the Jesuits, John Gavan, and Anthony
Turner, Conspirators in the Popish Plot, for High
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STATE TRYALS.

VOL. II. PART II.

*The Tryal of Nathaniel Reading, Esq;
for a Trespass and Misdemeanour,
before Commissioners of Oyer and
Terminer, who sate in the Court of
King's Bench in Westminster, the
24th of April, 31 Car. 1679.*

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ON Wednesday the 16th of April, Part of the Commissioners met, and Sir James Bulter, Attorney-General to the Queen, being the first Commissioner then present, gave the Charge to the Grand-Jury.

He acquainted them, That upon the Address of the House of Commons, his Majesty had been pleas'd to give Orders for this Commission of Oyer and Terminer. And tho' several

Charge to the
Grand Jury.

Probable Evidence sufficient for them to find the Bill.

Eleven Judges assist at the Tryal.

Sir *Fr North*, Lord Chief Justice of the Common Pleas.

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The Indictment for a Misdemeanour, in endeavouring to stifle the King's Evidence against the Popish Lords, by suborning the King's Witnesses, and bribing them to contract and lessen their Evidence against them.

veral other Offences were mention'd in the Commission, their Enquiries were to extend no farther than this Offence of Mr. *Reading's*, contain'd in the Indictment he had in his Hand. And directed them, That if they had but probable Evidence of the Crime, they ought to find the Bill, because their Presentment and Verdict was not a Conviction, but in the Nature of an Accusation, in order to bring the Prisoner to a fair Tryal.

Then the Witnesses being sworn, the Grand Jury withdrew, and about half an Hour after return'd, having found the Bill; after which, the Court adjourn'd to the 24th of *April*: When all the Judges, (except the Lord Chief Justice, who was out of Town) and the rest of the Commissioners, met again at the Court of King's Bench. And, in the first Place, Sir *Francis North*, Lord Chief Justice of the Common Pleas, dismiss'd the Grand Jury from any farther Attendance. Then the Prisoner was set to the Bar and arraign'd.

The Indictment set forth, That whereas *Edward Coleman*, *William Ireland*, and *John Grove*, together with other false Traytors unknown, on the 24th of *April*, in the 30th Year of the King, did traitorously conspire the King's Death, the Subversion of the Government, and of the Religion Establish'd, and to introduce the *Romish* Superstition, for which Treasons they had been duly attain'd and executed. And whereas *William* Earl of *Powis*, *William* Lord Vicount *Stafford*, *John* Lord *Bellasis*, *Henry* Lord *Arundel* of *Warder*, *William* Lord *Petre*, and Sir *Henry Titchburn*, Baronet, were, on the 30th of *November* last, lawfully accus'd of the aforesaid Treasons, and thereupon committed to the *Tower*; and thereof impeach'd by the Commons in Parliament. The Prisoner, *Nathaniel Reading*, well knowing the Premises, and being devilishly affected towards the King, his supream and natural Lord, and devising to subvert the Government and the Religion establish'd, and to obstruct and stifle the Discovery of the aforesaid Treasons, and to re-

tard

tard the Prosecution of the same against the said Lord *Powis*, Lord *Stafford*, Lord *Petre*, and Sir *Henry Titchburn*; did falsly, corruptly, and advisedly, against the Duty of his Allegiance, unlawfully solicit, suborn, and endeavour to perswade one *William Bedlow*, (whom the Prisoner knew had before given Information of the said Treasons against these Persons) to lessen, stifle, and omit to give in Evidence the full Truth, according to his Knowledge of the said Treasons against the said three Lords, and the said Sir *Henry Titchburn*, upon their intended Tryals, and to give such Evidence as the said *Nathaniel Reading* should direct; and to that Purpose did corruptly give to the said *William Bedlow* fifty six Guineas, and promis'd him, that within a certain Time he should receive divers other great Sums of Money and Rewards, for lessening, stifling, and omitting to give in Evidence the full Truth, according to his Knowledge, of the Treasons aforesaid, against the said three Lords and Sir *Henry Titchburn*, and for giving such Evidence as the said *Reading* should direct; to the Hindrance and Suppression of Justice, in Contempt of the Laws, and against the King's Peace, &c.

To which Indictment the Prisoner pleaded Not Guilty; and the Panel being call'd over, the Lord Chief Justice *North* directed, That Sir *John Cusler* should be Foreman of the Jury.

Mr. Reading. He is in Commission of the Peace, and therefore I desire he may be excus'd.

L. C. J. North. You cannot challenge peremptorily, it not being for your Life; and his being in Commission for the Peace, is no Cause of Challenge.

No peremptory Challenge but in capital Cases.

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Mr. Reading. I look upon this Indictment to contain exprefs Treason, and pray your Lordship's Judgement in it. I have had no Council, or so much as a Friend, or my Wife, suffer'd to come near me; and I have not been able to help my self, thro' the great Indisposition I have lain under, occasion'd by that barbarous and illegal Usage I have had; and may say, that I am the first *Englisman* that, in such Circumstances, was

The Prisoner complains of too strict and illegal a Confinement.

ever so used. But, my Lord, in my Apprehension, the Indictment charges me with a greater Treason than that which Mr. Coleman and the rest who were executed, dy'd for; and if the Indictment be true, I am certainly a dead Man; I desire your Lordship's Judgment therefore, if I may not be allow'd a peremptory Challenge.

One cannot be convicted of Treason on an Indictment where the Treason is not formally laid, tho' the Facts charg'd do amount to Treason.

L. C. J. *North*. If the Fact laid in the Indictment had been laid as an Overt-Act, for the evidencing the Imagination of your Heart, in compassing the King's Death, and the Destruction of the Realm, there it had been an Indictment of Treason; but since here is no Treason formally laid, nor the Word *Proditorie*, which is necessary in all Indictments of Treason; 'tis only a Misdemeanour you stand charg'd with, which, I must tell you, is a great Favour to you. Therefore you must shew Cause if you challenge.

Mr. *Reading*. But after this Favour shew'd me, may I not be indicted for High Treason? And does there want any one Circumstance of the Formality of an Indictment for High Treason, but that one of *Proditorie*.

L. C. J. *North*. It is not laid, That you did compass the Death of the King.

But Query. If he may not be indicted for Treason on these very Facts, after he has been convicted of a Misdemeanour for them. See Mr. Hampden's Trial.

Mr. *Reading*. Then I do not understand the Indictment; for it says, That Coleman and others did conspire the Death of the King, &c. and farther, that the Lords therein mentioned were accus'd of the same Treason, and that I, *præmissa prædicta satis sciens*, did falsely, maliciously, and advisedly do so and so; and were there no other Expression, this makes me guilty of Treason, or at least Misprision of Treason.

L. C. J. *North*. You exercise great Elocution and Eloquence; but there is a Difference between the Knowledge of a Treason that is secret, and concealing it, and the Knowledge of a Treason that is discover'd: Indeed, the Concealing of a secret Treason, and endeavouring to stifle the Evidence, is Misprision of Treason: But the knowing of this Treason, which all the World knows, is not laid as a Fault, but to aggravate the Fault afterwards charg'd. As for our Opinion, whether you

may

may be afterwards question'd for Treason, we are not to give it you ; but you are to answer the Indictment as now it is. An Indictment of Treason or Misprision must not be laid so, as that the Crime shall be collected out of the Matter of Fact only, but it must be formally laid.

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Mr. Reading. My Lord, I would know, *if being devilishly affected to the King, my supreme and natural Lord, and intending to levy War in the Kingdom, and to change the Government, and alter the Religion, &c.* be not High-Treason.

L. C. J. North. We shall answer none of these Questions, but tell you, That no Judgment of Treason can be given against you upon this Indictment; therefore, if you have any particular Cause to challenge Sir John Cutler, shew it.

Mr. Reading. My Lord, I have seen him in Company with Mr. Bedloe, my Accuser, and know there is no common Intimacy or Friendship between them.

L. C. J. North. Your Accusers are Witnesses for the King, and are neither to gain or lose by the Trial, and therefore cannot be presumed to make any Party for your Conviction: If you can shew that Sir John hath ever given his Opinion that you are Guilty, that might be a Cause of Challenge.

Mr. Reading. My Lord, I did intend to have his Evidence for me.

Juryman may be examin'd as a Witness.

L. C. J. North. That you may have, tho' he be sworn.

Then Sir John Cutler and the rest of the Jury were sworn. After which,

Mr. Edward Ward open'd the Indictment; and Mr. Serjeant Levinz stated the Nature of the Offence: Then the King's Council were proceeding to prove the Attainder and Execution of Coleman, &c. and that the Lords had been imprison'd and impeach'd for the Plot; but the Facts Mr. Reading admitted, and said, He believ'd verily there never was a greater Plot laid in Hell than this, and that he abhorr'd the Thoughts of it, and had encourag'd the Discovery of it.

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The Prisoner confesses, he believes there was a Plot.

The TRIAL of

Mr. *Bedloe* was call'd, and sworn.

Mr. *Ward*. Pray acquaint the Court what Discourse and Bargainings have been between you and Mr. *Reading*, for diminishing and lessening your Evidence.

Bedloe's Evidence of the Prisoner's tampering with him to contract his Evidence against the Lords.

Mr. *Bedloe*. Mr. *Reading* was a Stranger to me, till Sir *Trevor Williams* brought me acquainted with him; he has been always very just in whatever I have employ'd him as to my private Concerns: And, as to the Plot, he has in all publick Companies press'd me to make a full Discovery, and has said, That those who were convicted and executed for it suffer'd justly; and indeed, he has never endeavour'd to stifle the whole Plot; only, in private he has spoken to me, to be cautious as to some particular People that he solicited for; not but that he believ'd them Guilty as well as the rest, but desir'd, I would not be so hot against them. And after he had made me easy, (as he term'd it) he desir'd, I would make Mr. *Dugdale*, the other Evidence, easy too. And, says he, you gain your Point with the King, and with the Parliament and Kingdom if some suffer, and need not run at the whole Herd. Take my Instructions, I'll never advise you to any Thing that's ill, but I'll tell you how far you shall proceed, and if you can fix any Thing for them, you shall be sure to be well gratify'd. The Gentlemen he most solicited me for, were my Lord *Powis*, my Lord *Petre*, my Lord *Stafford*, Sir *Henry Titchburn*, Mr. *Roper*, Mr. *Cavill*, and one *Cocker*, a Jesuit; and he made me Easy too as to Mr. *Whitebread* and *Fennick* the Day they were try'd; for I have enough against them; and I told my Lord Chief Justice, I had more to say when Time and Place requir'd it, (that is) when I had found out all that Mr. *Reading* intended to do, and I could make out such Information as I now do; but I would not stifle that Treaty that was between him and me about the Lords in the Tower, which I knew was of greater Consequence than two old Priests. — A Day or two after my Lord *Danby* was sent for by the Black Rod, he

told

told me, He had been with the Lords in the *Tower*, and they did think I was in a great Measure capable of serving them; and they would have an Account what I could say against them, that so they might view and correct it: And on *Friday* the 28th of *March*, I had promis'd to meet him at my Lodgings about this Business, and he came to my Lodgings, but I being engag'd in other Affairs, could not meet him that Night. On *Saturday* Morning the 29th, he came to my Lodgings again, where I had plac'd Mr. *Speke* and my Man ready against he came, (for I did not conceal any of our Conferences, but reveal'd them to some of the Members of the Privy-Council, to the Prince, and to my Lord *Essex*, and to several private Friends, who I knew would keep the Secret.) When he came into the Room he said, Is there no Body here that can over-hear us? I told him, No; but I had planted Mr. *Speke* behind the Hangings, and made a hollow Place in the Bed where I laid my Man, and cover'd him so smooth it did not appear any Body was there: I ask'd him, what the Lords in the *Tower* said, for I was to give in my Answer to the Secret Committee that Night. He desir'd me to put it off till *Wednesday*, and he would bring me their final Answer: At length I agreed to put it off till *Monday*; he said, Altho' he had not a full Answer yet as to what the Lords would do, I might expect a noble Reward; and he had Orders to draw blank Deeds to be sign'd in ten Days after their Discharge, both for Sums and Estates which they would settle upon me, and I should have a speedy Supply of Money as soon as it could be got in: That my Lord *Stafford* was cutting down Wood and selling it, and when he had rais'd the Money I should have it; but at present my Lord had not Money to defray the Charges of his Family: In the mean Time, he said, he had Orders to supply my present Occasions; and, indeed, I have had a great deal of Money of him, and sometimes he has given me Gold when I did not ask for it. But when I objected, that I had only a verbal Pro-

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mise from the Lords for all this, and could not rely upon that ; he said, He would engage his Soul and Life to make it good, tho' they did not think fit to give any Thing under their Hands as yet. Mr. *Reading* desir'd me to let him see what Papers I had, (*viz.*) the Copies of what I had accus'd the Queen and the Lords of, that he might carry them to the Lords, and have their Answer: I pretended they were at my Mother's Lodgings, and went with him thither, to give the Witnesses an Opportunity of coming out, but not finding the Papers there, we return'd to my Lodgings, where we found Mr. *Speke* and my Man, and asking Mr. *Speke* how long he had been there? He said, Ever since I went away. I desir'd him to go before me to *Westminster*, and I would follow him: And when he was gone, we fell to writing out what we had concluded upon ; and when I inserted Words that were any Thing home against the Lords, he would tell me the Law, and what would reach them, and then alter it. On the *Monday* after he brought a Copy to me of his own Hand-writing, far from the Words we had set down in the Paper on *Saturday*, which Writing took off the Charge of Treason wholly. The Paper he brought back was ten times shorter than that he had of mine, which was forty times shorter than that I had given in to the Secret Committee.

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Mr. *J. Wild*. Was the Agreement between you and Mr. *Reading*, that you should swear what he should direct you?

Mr. *Bedloe*. It was to what he and the Lords should direct ; he was to give me an Account what they would have me say ; and he said, That the Lords had corrected the Paper.

Mr. *J. Jones*. Shew him the Paper, I suppose he will own his Hand.

Mr. *Reading*. This is my Hand, and I did deliver this Paper to Mr. *Bedloe* before Mr. *Speke* in the Painted Chamber.

L. C. J. *North*. Have you not the first Paper here?

Mr. *Bedloe*.

Mr. *Bedloe*. No ; he carry'd it to the Lords, and I never had it again ; this is the Paper corrected by the Lords, which I was to give in to the Secret Committee.

L. C. J. *North*. Tho' we cannot have the other Paper to compare with it, and shew how much the Testimony is lessen'd, yet let it be read, as an Evidence of the Fact in it self ; for we shall expect a good Account from you, Mr. *Reading*, what you had to do to prescribe his Evidence in Writing.

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Then the Paper was read, containing the Evidence *Bedloe* should give in against the Lord *Stafford*, Lord *Powis*, and Lord *Petre*, which was principally Hear'say, and what would not have affected their Lives.

Mr. *Speke* was sworn.

He depos'd, That Mr. *Bedloe* daily acquainted him with the Treaties between him and Mr. *Reading* ; and that on the 28th of *March* he met Mr. *Bedloe* at *Westminster*, who told him, He had appointed Mr. *Reading* to be with him in the Evening about the old Affair, and desir'd him to come to his Lodgings about seven a Clock, and he should be conceal'd in some private Place and hear their Discour'se. That accordingly the Deponent came, but Mr. *Bedloe* not coming to his Lodgings, and Mr. *Reading* having been to enquire for him, and left Word, he would be there at seven the next Morning ; the Deponent went away, but came to Mr. *Bedloe*'s Lodgings again between five and six the next Morning ; and that himself and Mr. *Bedloe*'s Man being conceal'd (as Mr. *Bedloe* has before related), about seven a Clock, Mr. *Reading* came in, and that he first ask'd, If any Body could over-hear him ? and then fell upon the Discour'se concerning what Money and Estates the Lords in the *Tower* had promis'd to settle upon Mr. *Bedloe* for his Services, in shortening and contracting his Evidence against them, and bringing them off from this Charge of High Treason, as is before recited in Mr. *Bedloe*'s Evidence. That after this Conference was over, Mr. *Reading* and Mr. *Bedloe* went out, and return'd

Speke deposes, that he overheard the Bargain between *Bedloe* and the Prisoner.

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The TRIAL of

return'd in half an Hour, and finding the Deponent in the Chamber, Mr. *Bedloe* ask'd him, How long he had been there? And that he answer'd, He just call'd on him as he was going to *Westminster*, that Mr. *Reading* might not suspect he had been there before, and heard their Dialogue: That Mr. *Reading* call'd for a Sheet of Paper, and went into the Bed-Chamber, and *Bedloe* told the Deponent, They were going to draw up what they had concluded on, that the Lords might see it and correct it; and then he was to deliver it in to the Secret Committee on *Monday*: That the Deponent accordingly saw Mr. *Reading* deliver the Writing to Mr. *Bedloe*, on *Monday*, in the Painted Chamber in *Westminster*, and that Mr. *Bedloe* deliver'd it to the Deponent as soon as ever Mr. *Reading* had left him; and that the Deponent immediately went up into the Lord Privy-Seal's Room, where the Committee of Lords used to meet, and there Mr. *Wharton* and he read the Paper so deliver'd, being written by Mr. *Reading*'s own Hand.

Juryman. Did you see Mr. *Reading*'s Face at the Lodgings?

Mr. *Speke*. Ay, between the Door and the Wicket, but not in the Room.

L. C. J. *North*. Is this that Paper you saw him deliver to Mr. *Bedloe*?

Mr. *Speke*. I take it to be so.

Mr. *Reading*. I own I did deliver that very Paper to Mr. *Bedloe*, in the Painted Chamber, before Mr. *Speke*, and it is all my own Hand-writing.

Mr. J. *Wild*. Did you know Mr. *Reading*'s Voice, are you sure, Mr. *Speke*?

Mr. *Speke*. I knew his Voice almost as well as his Person, and am very confident it was he.

Then *Henry Wiggins*, Mr. *Bedloe*'s Servant, was sworn.

He depos'd, That on the 20th of *March*, Mr. *Reading* came to his Master Mr. *Bedloe*'s Lodgings between seven and eight in the Morning; and that Mr. *Speke* and himself were hid in the Room, and heard the Discourse between Mr. *Reading* and his Master, concerning the Evidence his

his Master should give in against the Popish Lords, and the Rewards those Lords had promis'd him, by Mr. *Reading*, for contracting his Evidence, as is before related in Mr. *Bedloe's Evidence*. And that on the *Monday* following he saw Mr. *Reading* deliver the Paper produc'd in Court to his Master, Mr. *Bedloe*, in the Painted Chamber.

Juryman. Did you see Mr. *Reading* in your Master's Lodgings, as well as hear him talk?

Wiggins. When he came into the Room, the Rug was over my Head, and they spoke so softly that I could not hear them very well; but I put off the Rug without Mr. *Reading's* perceiving me, and then I saw him and heard him speak plainly.

Sir C. *Levinz*. We shall trouble your Lordship with no farther Evidence, having prov'd it by three Witnesses.

L. C. J. *North*. Then, Mr. *Reading*, now is the Time to make your Defence.

Mr. *Reading*. My Lord, before I make my Reflections on the Evidence, I shall give an Account, how I came to wait on these Lords in the *Tower*, and Sir *Henry Tichburn* here mention'd. Mr. *Bulstrode*, a Gentleman of the Privy-Chamber to his Majesty, told me, That my Lord *Stafford* desir'd to be remember'd to me, and pray'd me to come to him, but I did not venture to go till I had acquainted some of the Lords of the Close Committee with it, (*viz.*) the Prince, my Lord Treasurer, and the Marquis of *Worcester*, and they told me, That my Profession did privilege me to go; and, God forbid, but that Respect should be shewn him and the rest of the Lords: Whereupon I did go, and acquainted the Lieutenant of the *Tower* with my being there, who invited me to Dinner, and my Lord *Stafford* din'd with us; and, after Dinner, my Lord *Stafford* took me with him to his Quarters, and desir'd me to move for his *Habeas Corpus*. I told him, I thought it not seasonable yet to do it. But he would give me a Fee, which was two Guineas. I was afterwards desir'd by several Lords to speak with Sir *Henry Goring* and Sir *John Gage*, who desir'd me to move for their *Habeas Corpus*; and I was sent for

Mr. *Reading's* Defence. He shews how he became concern'd for the Popish Lords.

for on the same Account to the King's Bench, to my Lord *Brudnel*, and others; and I did move here for their *Habeas Corpus's*, and I was order'd to attend Mr. Attorney, to know if he would consent to their being bail'd, which he would not tho' the Writs were granted, till he knew what their Accusers could charge them with: Whereupon we did set down our Directions from Mr. Attorney about them, and went to Mr. *Bedloe* and Mr. *Otes*, to know what they could charge them with, and if they were easy as to their being bail'd; which Mr. Attorney being satisfy'd of from their own Mouths, did consent to the Bailing of several of them. My Lord, this did occasion my discoursing several Times with Mr. *Bedloe* and *Otes* concerning the Nature of the several Charges against the Gentlemen they had accus'd.

Then Mr. *Bulstrode* appear'd, and was sworn on Behalf of Mr. *Reading*.

He depos'd, That having been to see Sir *William Goring* in the Tower, my Lord *Stafford* desir'd him to acquaint Mr. *Reading*, he should be glad to see him, as Mr. *Reading* had open'd.

L. C. J. *North*. Mr. *Reading*, we know that the Acquaintance you had with *Bedloe*, and your going to the Lords, was in *Michaelmas* Term; and the *Habeas Corpus's*, and the Matter of Bailing, was in *Hillary* Term, which ended the 12th of *February*; but the Facts charg'd upon you, are on the 28th, 29th, and 31st of *March*, therefore apply your self to these.

Sir *Trevor Williams* appearing, Mr. *Reading* desir'd he might be sworn.

Mr. *Reading*. I desire to know if he did not recommend Mr. *Bedloe* to me about his Pardon?

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Sir *Tr. Williams*. I had a great Opinion of Mr. *Reading's* Skill in the Law, and Mr. *Bedloe* being a Countryman of mine, I was desirous his Pardon should be as perfect as might be, and therefore recommended him to Mr. *Reading*, and desir'd he would be careful about it.

Mr. Sa-

Mr. *Sacheverel* appear'd.

He said, They had receiv'd a Letter from Mr. *Reading* in the House of Commons, desiring that he might have some Papers that were proper to his Defence, which he had deliver'd in to the Secret Committee; he said, He suppos'd he meant a Paper about Mr. *Prickman*, and a Letter concerning him; as also a Paper containing the State of the Evidence against the Lords, which he pretended Mr. *Bedloe* had dictated to him; that the last Mr. *Clare* had, and the other two the House had order'd him to bring.

Mr. *J. Wild*. Mr. *Reading*, you are a Lawyer, pray speak to the Point you are charg'd with, your Tampering with *Bedloe* to take off his Evidence against those Lords.

Mr. *Reading*. My Lord, when Mr. *Bedloe* had his Pardon a drawing, and was ask'd by the King and my Lord Chancellor, Who was his Friend or Council? He said, I was his Friend and Council, recommended by Sir *Tr. Williams*: And his Majesty asking, what Advice I had given him? He answer'd, I had bid him speak the Truth with Courage, and spare no Man where he could justly charge them, and trust to God and his Majesty for a Reward. And the King reply'd, The Advice was honest, and bad him follow it. — What I have done in this Matter, I did in Friendship to him, and have supply'd him with several Guineas; with one or two, when he told me he wanted Bread. He has acknowledg'd the Services I had done him, and was pleas'd to tell me when he receiv'd the 500*l.* Reward upon the Proclamation, he would give me a third Part for the Services I had done him, and repay me whatever I had lent him, and the Fees that were due to me. — My Lord, in farther Discourse with Mr. *Bedloe* he told me, He was overjoy'd his Majesty had taken off the Confinement they were under; for as yet Mr. *Otes*, and *Dugdale*, and he, had not Liberty of speaking to one another, but now, he said, they could lay their Stories together. He said also, That he had several Witnesses who would swear whatever he bid them; and

He is told, he must not asperse the King's Witnesses, unl. & he bring Proof of what he charges them with.

and confess'd, He had not done well in some Things, particularly in charging Mr. Griffith.

L. C. J. *North*. It is not fair to go on thus. Either call Mr. *Bedloe*, to depose upon Oath what he told you, or produce other Witnesses to prove it, if you think it material: But you must not think to go on with such Discourses as these; I confess, this Kind of Defence is artificial enough, but we must hold you to the Point. What can you say to the Facts of the 28th, 29th, and 31st of *March*? All other Things signify nothing.

Mr. *Reading*. If I understand my Defence, nothing can be more material; and I desire Mr. *Bedloe* would answer upon his Oath, Whether I did not desire him to speak the Truth; but I bid him remember, this Land groan'd for the shedding innocent Blood already, and if he went on to add Sin to Sin, and charge Men unjustly, to take away their Lives, possibly he might ruin the Nation instead of preserving it.

Mr. *Bedloe*. I own, in publick he gave me such Advice, and that he has charg'd me with doing Wrong, particularly to Mr. *Griffith*; but that happen'd thro' the Mistake of those who took up the Uncle for the Nephew, and I'm sorry for it.

Mr. *Reading*. Did not he give you a Gold Watch?

Mr. *Bedloe*. Yes; and I acquainted the Committee and the Prince with it presently.

Mr. J. *Wild*. Mr. *Bedloe*, you receiv'd several Sums of Money of Mr. *Reading*; did he lend or give 'em you?

Mr. *Bedloe*. I wonder he should say I wanted Bread, when I had five Dishes of Meat allowed me every Day.

Mr. J. *Atkins*. And you had large Sums of Money given you?

Mr. *Bedloe*. As to the Money I receiv'd of Mr. *Reading*, he said, He had Orders from the Lords to let me have what Money I came for, and and sometimes he gave me Money when I did not ask it.

Mr. J. *Wild*. And upon that Occasion?

Mr. *Bed-*

Mr. *Bedloe*. I understood it so; and as to my paying him again, I confess, he was to have 100 *l.* per Annum out of every 1000 *l.* a Year of my Reward.

The Prisoner to have 100 *l.* per Ann. out of every 1000 *l.* *Bedloe* got.

Mr. *Reading*. Pray, Sir, did I directly or indirectly desire you to lessen a Syllable of your Evidence that was true?

Mr. *Bedloe*. Two Witnesses have prov'd that already, and I do, upon my Oath, declare, That I was to have such a Reward for bringing off the Lords from what they were charg'd with; and you said, you had Orders to draw blank Deeds.

Mr. *Reading*. My Lord, No Man ought to be accused but by lawful Witnesses, and I am, in your Lordship's Judgment. Whether Mr. *Bedloe* and the others be such? Mr. *Speke*, by his own Confession, is an Eves-dropper, which is a Crime in Law: And, for Mr. *Bedloe*, I desire he may answer upon Oath, Whether he did not lay in Coal and Billets behind the *Palsgrave's-Head* Tavern, and by *Charing-Cross*, in order to fire the City of *Westminster*?

Bedloe owns, he had been engag'd in a Design to fire the City.

L. C. J. *North*. If you ask him Questions to make him accuse himself, we must oppose it: And if he have his Pardon, that sets him right against all Objections; so that take it either Way, such Questions ought not to be ask'd.

But the Prisoner is told, he must not ask him any Questions to make him accuse himself.

Mr. *Reading*. The King's Pardon doth remit the Punishment, but still it may be objected to invalidate his Testimony.

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L. C. J. *North*. It doth so far set him right, that you shall not make him calumniate himself; and as for the Eves-dropping which you, from a Term in the Law, would cast as a Scandal on Mr. *Speke*, I take it to be for his Credit, that he should be pitch'd upon for this Purpose, as a Person whose Credit was unquestionable.

Mr. J. *Atkins*. Your charging these Witnesses as Eves-droppers, is no Aspersion at all; for it was prudent and necessary for Mr. *Bedloe* to take this Course, for if he had not done it, and these Practices had been otherwise discover'd, he had been in the same Danger you are now.

Mr. J.

The Prisoner answers, that *Bedloe* first propos'd the Matter to him.

Mr. J. Wild. You disgrace your Profession in making so weak a Defence. — What do you say to the Discourse that pass'd between you at *Mr. Bedloe's* on the *Saturday Morning*?

Mr. Reading. My Lord, he propos'd the Business first to me: He bid me tell the Lords *Stafford*, *Powis*, and *Petre*, that if they did not secure him a good Reward, he would give such an Evidence as should deprive them of their Lives, and that he had other Witnesses to back him; but if they would give him some suitable Reward, his Testimony should do them no Hurt at all.

L. C. J. North. Will the Jury believe your bare Assertion?

Sir J. Butler. I desire to know, if fifty six Guineas were paid by *Mr. Reading* to *Mr. Bedloe*, to induce him to lessen his Evidence against the Lords?

Mr. Bedloe. I had sometimes two Guineas, sometimes more, at several Times, which might amount to that Sum at least, but not any such great Sum together.

Mr. Reading call'd *Mr. Palmer*, who was sworn.

Mr. Reading. Pray, Sir, give an Account of *Mr. Bedloe's* borrowing Money of me that *Tuesday Morning* I was clapp'd up.

Mr. Palmer. *Mr. Bedloe* having twenty Shillings in his Hand, *Mr. Reading* came in; to whom *Bedloe* said, I have no more than this, and this I borrow'd of my Mother; then *Mr. Reading* gave him two Guineas, and *Mr. Bedloe* said, *God-a-mercy, thou art an honest Man, and my chief Fountain.*

Mr. J. Atkins. This was when you saw *Mr. Bedloe* was for your Turn, and therefore makes against you.

Mr. Reading. Did not *Bedloe* confess, he had laid in Fuel to burn the City of *Westminster*?

Mr. Bedloe. I acknowledge it, and it was Part of the Treason the King pardon'd.

Mr. Reading. Did I ever know *Nicholas Jordan* till you acquainted me with him? Had not he some Estate in *Gloucestershire*?

Mr. Bed-

Mr. Bedloe. I own I told Mr. Reading, I would have such an Estate of my Lord's in Gloucestershire settled upon me; and he said; He had Orders to draw Blank Deeds for the conveying of that Estate, to be sign'd in ten Days after his Discharge.

Bedloe owns he pitch'd upon an Estate in Gloucestershire for his Reward.

Mr. Reading. Bedloe said, For the other Witnesses, he would do well enough with them, if my Lord would give him his Reward. And I went to my Lord Stafford in the Tower, and ask'd him, If he knew this Jordan? and he said, He was a Tenant of his, but he would not give Bedloe Six-Pence, for he valued himself upon his Innocence and the Infamy of his Accusers, and he should look upon it as the greatest Part of his Guilt, if he gave him any Thing; but he said, I had been often at the Tower, and he was indebted to me for Fees, and he would give it me under his Hand, to pay me 200 l. (for the Pains I had taken and should be at in his Affairs) to be paid within ten Days after his Enlargement; but remember, he said too, I will not directly or indirectly promise Bedloe Six-Pence. My Lord Powis said the same; but added, if Bedloe would forbear to charge him unjustly, as he had hitherto done, he should find he would do by him like a Gentleman, when he was acquitted.

The Prisoner clears the Popish Lords of any Design to bribe Bedloe.

L. C. J. North. You have said enough, Mr. Reading.

Mr. J. Wild. This is against your self.

Mr. Reading. I can't help it, I thought I was bound to do it to save innocent Blood. And, my Lord, I came back to Mr. Bedloe, and I did ask him, If there was any Body in the Bed by him? and he ask'd me what the Lords said, and, I think, I told him in Terms very little different from what I have said now. And as to the Thousand Pounds, and drawing the Writings, I never open'd my Lips of such a Thing.

He avers, that his treating with Bedloe was to prevent the Shedding of innocent Blood;

L. C. J. North. What, not concerning the Estate in Gloucestershire?

Mr. Reading. That was for the securing the 200 l. to me, *pro Consilio impenso & impendendo*, and I did tell Bedloe, My Lord offer'd me a Letter,

promising to secure the Payment of it to me out of the Estate in *Gloucestershire*.

Mr. J. Wild. Why should you discourse with Mr. *Bedloe* about your Pension?

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Mr. Reading. My Lord said, When I had the 200 l. I might dispose of it as I saw fit. Upon this *Bedloe* answer'd, He would take their Lordships Words, and he would put in such an Evidence as I should write down and he would dictate to me: And when he had dictated and I had read it to him, he afterwards read it himself, and said, This is what I think is kind to them, and what I can come off well enough in saying; and bid me take it to the Lords, and have their Answer. And this is that very Paper I wrote in *Bedloe's* Chamber, as it was dictated by himself, and I carry'd it to the Lords; and my Lord *Stafford* said, He found Mr. *Bedloe* began to be honest. I shew'd it to my Lord *Petre*, and he gave me five Guineas, before which Time I had not a Penny of his Money; and I was with my Lord *Powis*, but being in Haste then, I did not shew it him. On the *Monday* Morning I came to Mr. *Bedloe's*, and he not being within, I was going to the House of Lords, and, in my Way, met him in the Painted Chamber, with Mr. *Speke*; and he desir'd me to deliver a Copy of this Paper to them to write it out, and I did so. That which I deliver'd to *Bedloe* before Mr. *Speke*, was in the first Person, the other was in the third, and I believe there is no other Difference between them. After this *Bedloe* receiv'd his 500 l. and promis'd to pay me all next Morning if I would come to his Chambers, which I did, but missing him I came on to *Westminster*, and went up to the Speaker's Chamber to talk with my Clients, but found the Door fasten'd, and I was arrested.

Then Mr. *Bedloe* shew'd both the Papers.

Mr. *Bedloe*. These are fairly without interlining, but there were forty Interlineations in that that was written in my Chamber.

Mr. Reading. I speak it in the Presence of God, this is the very Paper I did write out, and there was no other Interlineations in it than what you see;

Bedloe receives
500 l. of the Go-
vernment for his
Discovery.

see; it never went out of my Hand, from the Time I wrote it in *Bedloe's* Chamber, till I shew'd it the Lords in the *Tower*, and afterwards I deliver'd it to *Mr. Sacheverel*; there was no other Paper upon my Word.

Mr. J. Wild. And can you justify carrying the King's Evidence to the Prisoners, if it was no more?

Mr. Reading. I thought it no Crime, and did it to prevent Perjury and shedding innocent Blood.

L. C. J. North. Will you take upon you thus to impeach the Justice of the Nation? Are not you a Lawyer, and know, that no Man may be of Council for a Prisoner in Treason or Felony, till he is assign'd? And how will you justify your self in carrying the King's Evidence to the Lords? You have spoil'd your Cause, and confess'd as much as amounts to the whole Charge.

No Man ought to be Council in Treason or Felony, till he is assign'd.

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Then *Mr. Reading* produc'd a Protection that *Bedloe* had given to one *Mr. Prickman*, a Merchant who was broke, under Pretence of being one of his Witnesses; and said, When he found *Mr. Bedloe* had these Tricks, and used such indirect Means, he thought he should do the King and the Nation good Service, if he could prevent his spilling innocent Blood.

L. C. J. North. If you had suspected *Bedloe's* Honesty, you should have gone to the King's Council or the Secret Committee; but for you to take upon your self to do this, shews, it is but a plausible Excuse to cover your corrupt Dealing.

Mr. Reading. My Lord, I have several Witnesses to prove, that I was resolv'd to give his Majesty, or the Secretaries, an Account of it at the Time I was taken.

L. C. J. North. This is nothing to the Purpose; the Court has had a great deal of Patience.

Mr. Reading. I have done, my Lord.

Then the Lord Chief Justice *North* summ'd up the Evidence, and told them, That *Mr. Reading* was indicted for endeavouring to suborn *Mr. Bedloe* to lessen his Evidence against the impeach'd Lords, which had not only been prov'd by un-

The L. C. J. North directs the Jury.

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doubted Testimony, but he had confess'd the whole Charge in the Indictment ; and order'd them to go together and consider of it.

The Jury can have
no Papers out of
Court that are
not under Seal.

Mr. J. Wild observing a Paper in Sir John Cutler's Hand, told him, The Jury must have no Papers out of Court but what were under Seal ; but Sir John answer'd, It was only a Paper with the Names of the Jury. After which the Jury withdrew, and soon after brought the Prisoner in guilty of the Offence whereof he stood indicted : And then the Court adjourn'd till two a Clock.

The Prisoner con-
victed.

The Court being set in the Afternoon, the Lord Chief Justice North made a Speech, aggravating the Defendant's Offence as he was a Council ; one who ought to be a Man of Knowledge, and a Minister of Justice, to assist the Court wherein he pleaded ; and said, He thought the Court ought to shew a more than ordinary Severity against such a one. And then he pronounc'd the Judgment, *That he should be fined 1000 l. and be imprisoned for a Year, and that upon the Monday following he should be set in the Pillory for the Space of an Hour, in the Palace-Yard in Westminster ;* but said, The Offence being such as had enrag'd the People to that Degree that he might be in Danger of his Life, they had order'd the Sheriff and the Justices of the Peace, that the Peace should be kept so, that no other ill Consequences might happen to him, but only the Shame and Infamy he was condemn'd to, which he thought he deserv'd as well as any Man that ever was convicted.

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His Sentence.

And on Monday following, Mr. Reading was set in the Pillory according to his Sentence.

He is set in the
Pillory.

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The TRYAL of THOMAS WHITE, alias WHITEBREAD, Provincial of the Jesuits in England, WILLIAM HARCOURT, pretended Rector of London, JOHN FENWICK, Procurator for the Jesuits in England, JOHN GAVAN, alias GAWEN, and ANTHONY TURNER, for High-Treason, the 13th of June, 31 Car. 2. 1679.

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THE Prisoners were try'd at the Sessions House in the *Old-Baily*, by Virtue of a Commission of Oyer and Terminer, directed to all the twelve Judges and others. And one *James Cocker* was also set to the Bar, in order to be arraign'd with the rest of the Prisoners.

All the 12 Judges in the Commission of Oyer and Terminer.

James Cocker preferr'd a Petition to the Court, that his Tryal might be put off, having had Notice of Tryal but the Day before.—— The Lord Chief Justice told him, He should hear the Indictment read, and if he could name any Witnesses that could be serviceable to him hereafter, the Tryal should be put off.

Sir Geo. Jefferies.

Mr. Recorder. My Lord, one *Mrs. Ireland* came to me on *Saturday Night* on Behalf of all the Prisoners, and said, There were some Witnesses that would not appear unless they had some Order. I bid her bring me a Note of the Witnesses Names they desir'd, and they should have all the Assistance the Court could give them; but I have never heard from the Gentlewoman or the Prisoners since.

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Then the Indictment was read.

The Indictment set forth, That *Thomas White*, alias *Whitebread*, of the Parish of *St. Giles's in the Fields*, in the County of *Middlesex*, Clerk; *John Fenwick*, *William Harcourt* alias *Harrison*, *John Gavan*, *Anthony Turner*, and *James Cocker*, of the same Parish and County, Clerks; as false Traitors to their supreme and natural Lord King

The Indictment for High Treason in compassing the Death of the King, the Subversion of the Government, Religion, &c.

Charles the Second, not weighing the Duty of their Allegiance, &c. did, with divers other false Traitors, to the Jurors unknown, on the 24th of *April* in the 30th Year of the King that now is, advisedly, maliciously, and traitorously compass, imagine, and intend to stir up Sedition and Rebellion, and to procure a miserable Slaughter of the King's Subjects, to depose the King, and to bring him to Death, to subvert the Government, and Religion establish'd, and to levy War against the said King. And that, in order to accomplish their said traitorous Imaginations and Purposes, they, the said *Thomas White*, &c. did, on the said 24th of *April* in the Parish and County aforesaid, traitorously assemble, consult, and agree to kill his Majesty, to change the Religion establish'd, and introduce the Romish Superstition, and subvert the Government; and that *Thomas Pickering* and *John Grove* should be the Persons who should murder the said King: And that it was farther agreed by the Prisoners, that they would say a certain Number of Masses for the Soul of the said *Pickering*, and that *Grove* should have a Sum of Money for his Reward. And the Indictment farther sets forth, That the Prisoners did take the Sacrament to conceal the said Treasons: And also, That at the Time and Place aforesaid, they did perswade and excite four other Persons, to the Jurors unknown, to kill the King. All which was contrary to their Allegiance, the King's Peace, his Crown, and Dignity, &c.

The Overt-Acts.

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Whitebread objects, That he had been try'd before for the same Offence, and the Jury were dismiss'd without any Verdict.

Whitebread. My Lord, upon the 17th of *December* I was try'd for the same Thing; the Jury was charg'd with me, and the Evidence given against me, and found insufficient, and then the Jury was dismiss'd without giving a Verdict. I desire I may have Council to advise me, Whether I ought to plead a second Time; for I am inform'd, that no Man can be put in Jeopardy of his Life a second Time for the same Cause: I desire the Record may be view'd. And he quoted the Case of *Seger* the 31 *Eliz.*

Sir *Will. Scroggs*.

L. C. J. There is no Entry made of it, for it was no Tryal, there having been no Condemnation or Acquittal.

White-

Whitebread. But I ask, Whether I ought not to have been condemn'd or acquitted?

L. C. J. No; It is in the Discretion of the Court to discharge the Jury, where any Accident happens: As where a Man is indicted for Murder, and a Witness happens to be taken ill, &c. they may discharge them, or else the Murderer might escape.

Whitebread. That is not my Case.

L. C. J. North. The Jury were discharg'd before they consider'd any Thing concerning you; and, in my Experience, I have known it often done.

Then the rest of the Judges were consulted.

L. C. J. All the Judges of *England* are of the same Opinion.

Mr. Recorder. 'Tis the constant Practice.

Whitebread. I am satisfy'd. — Then he pleaded *Not Guilty*.

Fenwick. My Case is the same with *Mr. Whitebread's*; and I suppose we were not proceeded against, because *Bedloe*, the second Witness, declar'd, He had nothing against us; otherwise we had suffer'd with the rest; so, I suppose, we ought to have been discharg'd.

L. C. J. The Jury did not consider, whether you were Guilty or not; and we prevented your making any Defence, because we did not think it a sufficient Charge.

The Court having over-rul'd this Matter, the Prisoners severally pleaded *Not Guilty*; and *Cocker* naming a Witness, who was a material Evidence for him, and was thirty Miles out of Town, the Court respited his Tryal till the next Day, but told him, They could not put it off till *Monday*, as he desir'd, because it was the *Effoin Day* of the ensuing Term, and then their Commission would be out.

Then the Jurors were call'd, in order to try the other five Jesuits, who made no other Challenges, than only in general to those who had pass'd upon the former Tryals for the same Facts they stood charg'd with.

The Jury being sworn and charg'd with the Prisoners, *Mr. Belwood* open'd the Indictment.

The L.C.J. avers, It was in the Discretion of the Court to discharge the Jury without taking a Verdict.

Page 278: All the Judges agree, that this was Law. But *Query*, for it has been deny'd to be Law ever since.

Fenwick makes the same Objection, but is over-rul'd.

The Prisoners plead *Not Guilty*. *Cocker's* Tryal is put off.

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Sir Cr. Levins observes, 'Tis Treason for a Subject to take Popish Orders.

Tho' few had suffer'd on that Account.

And shews the cruel Usage of the Protestants Abroad.

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Otes's Evidence of the Consult of the Jesuits at the White Horse. April 24, 1678.

Sir *Creswel Levins* observ'd, That the Prisoners were all Popish Priests, and as such were Guilty of High-Treason by the 27 *Eliz.* and ought to die for that; but that they were now charg'd with a Treason of a blacker Nature, and so would not have the Satisfaction of saying, They dy'd for their Religion: And that altho' the abovesaid Statute had been made near one hundred Years, yet there had been very few Examples of Priests who had suffer'd purely for their Religion, (tho' many had suffer'd for the same Crimes the Prisoners at the Bar were charg'd with) and that on the contrary, in Popish Countries, they had murder'd the Protestants by Thousands, without Law or Justice, as at *Mirendol*, *Paris*, in *Ireland*, and *Piedmont*. Then he proceeded to shew the Nature and Course of the Evidence.

After which, the Witnesses were call'd, and first, Mr. *Otes* was sworn.

Otes. My Lord, I may have Occasion for the other Witnesses, I desire they may be call'd in.

Gavan. That may be inconvenient, he may instruct his Witnesses.

L. C. J. North. We will take Care of that.

Then the other Witnesses were sent for.

Sir *Creswel Levins*. Pray, Mr. *Otes*, what can you say to these Gentlemen the Prisoners?

Otes. It was known to us at *St. Omers*, that the Prisoner, Mr. *Whitebread*, was constituted Provincial in *December* last was Twelve Month; and, by his Authority, he order'd Father *Conyers* to preach in the Sodality of the *English* Seminary there, on *St. Thomas of Becket's Day*; and that in his Discourse he should maintain, That the Oaths of Allegiance and Supremacy were Heretical, Antichristian, and Devilish; which he accordingly did. That Mr. *Whitebread*, in *January* or *February*, wrote to *St. Omers*, That Archbishop *Talbot* had written to him from *Ireland*, that several Thousands of *Irish* were ready to rise when the Blow should be given in *England*; and Mr. *Whitebread* said, He hoped it would not be long e'er it was given. [By the Word *Blow*, we understood the Murder of the King.] In *January*, *Whitebread* sent

over

over two Jesuits to *Ireland*, to enquire into the State of Affairs there; and in the Beginning of *April* they return'd, as he acquainted us by his Letters; and he also mention'd a Consult to be held in the Month of *April*, O.S. and accordingly a Consult was held, where the Prisoners, *Whitebread*, *Fennick*, *Harcourt*, and *Turner* were present, and there they did sign a Resolve, *That Pickering and Grove should go on in their Attempt to dispatch the King*; *Whitebread* sign'd this Resolution at *Wildbouse*, *Fennick* at his Lodgings in *Drury-Lane*, and *Mr. Harcourt* at his Chamber in *Duke-Street*: But I should have premis'd, that this Consult was begun at the *White-Horse Tavern* in the *Strand*, where it was agreed to send *Father Cary* to be their Procurator at *Rome*; and then they adjourn'd, and distributed themselves into several lesser Clubs, in which they severally sign'd the said *Resolve*. — We were eight or ten that came over from *St. Omers* to *England* to this Consult, and when it was over we return'd. In the Beginning of *June*, I think, the Provincial himself came over to *St. Omers*, in order to visit the *English Colleges* in *Flanders*, and staid till about the 10th of *June*; and in some of his Discourses with the Fathers he said, *He hop'd to see the black Fool's Head at Whitehall laid fast enough*; and that if his Brother should appear to follow his Footsteps, his Passport should be made too, and he also should be dispatched. — On the 13th of *June*, O.S. I had Orders to come for *England* again. On the 14th I took Passage in the *Packet-Boat*, and landed at *Dover* the 15th, and there I met the Prisoner, *Mr. Fennick*, he having brought some Students thither to send over to *St. Omers*: *Mr. Fennick*, and myself, and some others, took Coach for *London*; and when we came six Miles beyond *Canterbury*, the Searchers seiz'd a Box of his full of Beads, Crucifixes, and such Things; and he said, If they had search'd his Pockets as they did his Box, they might have found Letters that would have cost him his Life, for they were about our Concern in Hand. — On the 17th of *June*, O.S. we came to *London*; and in *July* came over *Richard*

And of White-
bread's offering
Sir Geo Wakeman
10000 l. to poy-
son the King.

Abby, (whose right Name is *Thimbleby*) with Instructions from the Prisoner *Mr. Whitebread*, who was then in *Flanders*, to offer *Sir George Wakeman* 10000 l. to poyson the King; and also a blank Commission for *Sir John Gage* to be an Officer in the intended Army; which Commission, by that Gentleman's Order, I deliver'd to *Sir John Gage* upon a *Sunday*.

Whitebread. Did I order you?

Otes. He order'd *Abby*. I saw the Letter, and knew it to be *Whitebread's* Hand, and, I think, I fill'd up the Blanks, and there were *Mr. Harcourt*, *Abby*, and *Ireland*, present at the same Time. Two or three Days after, *Mr. Abby* went to the *Barb*, and *Mr. Fenwick* and *Mr. Harcourt* advis'd him to give an Account of Matters to the People in *Somersetshire*; and *Mr. Fenwick* said, He did not question, before he came to Town again, to have the Gentleman at *Whitehall* (whom they call'd the *Black Bastard*) dispatch'd.

Fenwick. What Time was this?

Otes. The latter End of *July*, or the Beginning of *August*. — As to *Mr. Gavan*, in the Month of *June* 1678, he wrote Letters to the Fathers at *London*, giving an Account of their Affairs in *Staffordshire* and *Shropshire*, and of the Diligence of one Father *Ewers* in those Parts. And in *July* or *August* *Gavan* came to Town, and I met him at *Ireland's* Chamber, where I heard him give the same Account of the Affairs of *Staffordshire* and *Shropshire* as he had done in his Letters before: And I saw him draw a Bill on one *Sir William Andrews* in *Essex*, for the Payment of Money to some Priests who were strolling there, and found it to be the same Hand with the Letter I mention'd.

Gavan. What did I write about in the Letters you speak of?

Otes. Why, how diligent my Lord *Stafford* was, &c. but I desire to be excus'd as to that, because it will diminish my Evidence in another Part of it.

Gavan. You are sworn to speak all the Truth.

L. C. J.

L. C. J. You must speak the whole Truth as far as it concerns any of the Prisoners.

Otes. He related, how successful they were in those Countries, and that there would be two or three thousand Pounds raised there towards carrying on the Design. — About the 12th of August, I am positive it was between the 8th and 12th, Mr. Ireland took his Leave of us, as tho' he were going to St. Omers; and Mr. Fenwick was to be Treasurer and Procurator in his Absence. And about the 21st of August, Fenwick, and Harcourt, and some other Fathers, met together at Wildbouse, and there lay before them fourscore Pounds, most of it in Guineas, which was to be paid to the four Irish Ruffians who were to murder the King at Windsor; and Coleman, who was executed, came in, and gave the Messenger a Guinea to hasten his Journey; but we adjourn'd from this Place to Mr. Harcourt's Chamber, where the Money was paid to the Messenger, because Harcourt had left some Papers there that were to be sent to Windsor. — The Day before, or the Day after this, there was a Consult at the Benedictine Monks, where Fenwick and Harcourt were present, who had receiv'd an Account from Archbishop Talbot in Ireland, of their conspiring the Death of the Duke of Ormond, and desiring that Commissions and Money might be sent over thither for carrying on the Design; and Mr. Fenwick sent Commissions to Chester by a special Messenger, and some Letters by the Post: And Mr. Fenwick gave me some Money for my necessary Expences, and admonish'd me to procure Masses to be said for the Success of the Design. On the 25th I saw Mr. Fenwick at his Chamber again, and on the 26th he was to go to St. Omers with eight or ten Students, and I saw him no more till he was taken.

On the 3d of September, understanding Mr. Whitebread was come to Town, I went to his Chamber, but being at Supper, I could not see him; and when I came to him next Morning, he revil'd me, and struck me, imagining I had made a Discovery; for the Gentleman whom I had communicated

Otes's Evidence against Fenwick and Harcourt, of their paying 80l. to four Ruffians, who were to murder the King at Windsor.

Deposes, That the D. of Ormond was to have been kill'd in Ireland, &c.

That *Whitebread*
beat him for dis-
covering the Plot.

municated the Thing to, and went to the King about it, having much the same Cloaths I had, they had been inform'd it was me; but having justify'd my self, he said, He would be Friends with me if I could learn who it was had done it. I have nothing else to depose concerning Mr. *Whitebread*, but that Sir *Geo. Wakeman* not accepting the 10000 *l.* that was offer'd for poysoning the King, *Whitebread* order'd 5000 *l.* more to be offer'd him, and he accepted it, and by a Letter from *Whitebread* from *Flanders*, he appear'd mightily rejoyc'd at it.

Deposes, That they
was at the Con-
sult.

Sir *Gr. Levins*. What do you say to Mr. *Turner*?
Otes. He was at the Consult, and sign'd the Resolution for killing the King; as did *Whitebread*, *Fennick*, and *Harcourt*: But I can't say positively that *Gavan* was there.

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Whitebread. He says he was at the Consult in April; I would know how long before that Time he and I were acquainted?

Otes. I never saw Mr. *Whitebread's* Face till then.

Whitebread. What Employment were you to have?

Otes. When I came over from *St. Omers*, I was to attend the Motions of the Fathers at your Chamber, and carry the Resolve from Chamber to Chamber, where the Fathers respectively met.

Fennick. How long did you stay in Town?

Otes. From the Time I came to *England* to the Time I went over again, was under twenty Days.

Fennick. Who came over with you from *St. Omers*?

Otes. Father *Williams* Rector of *Wotton*, the Rector of *Liege*, Sir *John Warner*, Sir *Thomas Preston*, and others.

Whitebread. Were not Mr. *Nevil* and Sir *Robert Brett* there?

Otes. I believe they might.

Whitebread. You have said so in your Narrative.

L. C. J. A Man may venture to write more than he will swear.

Fennick. His Narrative is upon Oath.

L. C. J.

L. C. J. *North*. You must bring the Person here that saw him take the Oath : You must not think to make a Pamphlet Evidence.

Gavan. What is brought against me is this, He says, *Ashby* came to Town the middle of *July*, and staid in Town a Fortnight, and charges me, that during that Time I came to Town and had such Discourse : Now I would have it ascertain'd whether it were the first or last Week that *Ashby* was in Town, because I may disprove him in one Week or t'other.

L. C. J. If it be either, it is enough to prove you Guilty.

Gavan. Was it only one Time or more you saw me in *London* ?

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Otes. I saw you twice one Day, and in the Afternoon you were ill, I remember, and had a Cordial brought you by one *Walpole*, an Apothecary, or his Man, to Mr. *Ireland's* Chamber.

Gavan. As I hope for Salvation, I never saw him till *January* when I was in Custody ; nor was I in *London* in *July*.

Turner. Did you ever see me in your Life till you saw me at *Whitehall* ?

Otes. I saw you at the Consult.

Turner. How many were there.

Otes. Forty or fifty : I won't say I saw you at the *White-Horse*, but at Mr. *Fennick's* Chamber I saw you, when they were divided into lesser Clubs.

Turner. At *Whitehall* : You said it was at *Wild-house*.

Otes The greatest Part sitting at *Wildhouse*, we call'd it all *The Consult at Wildhouse*.

L. C. J. Your Defence, I perceive, will be little else but Captiousness, to disprove him in Circumstances of Time, Place, Persons, and Numbers, which are but little Matters to the Substance.

Mr. *Dugdale* was sworn.

Sir *Cr. Levins*. Pray acquaint the Court what you know of *Whitebread* and *Harcourt*.

Dugdale. *Whitebread* wrote a Letter to Mr. *Ewers* (enclos'd in one from Mr. *Groves*) advising him to choose them that were trusty and stout Fellows,

Dugdale's Evidence against Whitebread.

lows, and such as were desperate and hardy, or to that Purpose: This Letter I saw at *Tixhall*; for all the Letters that came to *Mr. Ewers* were directed to me, and enclos'd in *Mr. Groves's* Letters, and this Letter I broke open and read.

L. C. J. What was *Mr. Ewers*?

And *Gavan*.

Dugdale. He was a Jesuit, and my Confessor; and I was entertain'd by *Mr. Gavan* in the Conspiracy against the King's Life, as I was by several others.

L. C. J. Were you acquainted with *Mr. Whitebread's* Hand?

Dugdale. I saw him write a Letter at *Tixhall* before, which he deliver'd me to send; and I can almost positively swear it is his Hand.

L. C. J. What say you to *Gavan* and *Ewers*?

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Dugdale. There were several Consultations for taking away the King's Life and introducing Popery, at *Mr. Ewers's* Chamber, and *Gavan's*, and at my own; and one particularly in *September* last at *Tixhall*, where were *Mr. Gavan*, my Lord *Stafford*, and several others. And I being pitch'd upon for one, who was to make an Attempt upon the King, was to be sent to *London* by *Mr. Harcourt*, to be under the Tuition of *Mr. Parsons*.

L. C. J. Who broke it first to you?

Dugdale. *Mr. Ewers* and *Gavan*; and I appeal to *Mr. Gavan* for the Truth of this.

Gavan. Look on me with Confidence if you can?

Mr. J. Pemberton. You must not threaten the King's Witnesses.

Dugdale. Was I never under your Tuition?

Gavan. He was not under my Tuition: I never was in his Chamber in my Life. Pray, in what Room of my Lord *Aston's* House was this Discourse, and who were present?

Dugdale. It was in the little Parlour, and in *Mr. Ewers's* Chamber; and there were *Mr. Ewers*, *Mr. Lewson*, *Mr. Peters*, and some others; and *Mr. Gavan* knows my Zeal, for I gave them 400 *l.* to pray for my Soul, and carrying on this Design; and afterwards, when they said they were afraid they should want Money for carrying it on, I promis'd

promis'd them 100 l. more, and Mr. *Gavan* assur'd me, I should be canoniz'd for a Saint.

Sir *Gr. Levins*. Did you hear any Thing of an Army, or about making a Massacre?

Dugdale. Mr. *Gavan* said, Tho' beyond Sea they had Troubles enough themselves, yet if we could effect it, Men and Money would not be wanting; and there was a Letter came from *Paris* into the Country thro' Mr. *Harcourt's* Hands, That it was their Opinion at *Paris* and *St. Omers*, that they should fling the King's Death upon the Presbyterians, and then they might bring the Episcopal Men into their Party, to revenge themselves upon them. And there was to have been a Massacre; and if any escap'd that, who were not Papists, there was to be an Army to cut them off. And Mr. *Gavan* has endeavour'd to prove by Scripture, That it was lawful and good to destroy the King, or any one, for the sake of Religion, and observ'd what great Miracles the Reliques of Father *Garnet* had wrought beyond the Seas.

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Sir *Gr. Levins*. How many Letters have you intercepted of Mr. *Harcourt's*?

Dugdale. I believe a hundred; and particularly one, which gave an Account of the Death of Sir *E. Godfrey*, the *Monday* before he was found, and must be written on the *Saturday* he was kill'd, for the Words were, *This very Night Sir E. Godfrey is dispatch'd*.

His Evidence against Mr. *Harcourt*, and concerning Sir *E. Godfrey's* Murder.

Mr. *Belwood*. Did you acquaint any Body with this?

Dugdale. The next Day, being *Tuesday*, I went to the Alehouse near my Lords, and ask'd, If they did not hear of a Knight that was kill'd at *London*? And have one here to testify it.

Harcourt. When was the last Time you receiv'd any Letters from me?

Dugdale. The last was that about Sir *E. Godfrey* in *October*.

Harcourt. I have not writ to that Person this Year and half.

Dugdale. You know when Mr. *Ireland* was in the Country last Year, you were to send him the Answers that came from *St. Omers* to my Lord *Ashton's*,
eight

eight of which I saw, at least, and yet you say you have not written to me in a Year and half.

Harcourt. I did formerly write to Mr. *Evers*, and directed the Letters to him, but have left off writing for several Years; neither did I write the Letter he speaks of, or ever approve the Murder of any Man; and as for his knowing my Hand, when the Committee came to the Gate-House, and three of them writ down their Names, and he was call'd in, and ask'd which was mine, he could not say which was mine.

L. C. J. You write more Hands, and have more Names than one.

Mr. *Cetwind* was call'd.

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L. C. J. Do you remember any Discourse you had with Mr. *Dugdale* last Summer?

Cetwind. I was in *Staffordshire* last October; and on a Tuesday that Month, one Mr. *Sanbridge*, a Kinsman of my Lord *Aston's*, came to me, and said, He had been at *Elds*, and a Girl of the House told him, Mr. *Dugdale* had been there and reported, there was a Justice of Peace of *Westminster* kill'd, and on Saturday following my Letters brought down the News of it; and I remember also, that being at *Litchfield* that Saturday, News came thither, that Sir *E. Godfrey* was found murder'd.

Mr. *Dugdale* was set up again.

Mr. *Recorder.* What were those hardy, desperate Fellows to do, that Mr. *Whitebread*, in his Letter, advises them to make Choice off.

Dugdale. They were to kill the King.

Whitebread. Were those very Words, *killing the King*, in the Letter I wrote?

Dugdale. To the best of my Remembrance those were the very Words, and I was one that was made Choice of about it.

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L. C. J. Were these Letters sent by the ordinary Post?

Dugdale. Yes, and they were directed to me; so that if they had been intercepted, I should have been hang'd, and they sav'd.

Whitebread. How came you to see these Letters?

Dugdale. I open'd them my self.

L. C. Bar.

L. C. Bar. Do you know any Thing of Mr. *Turner* ? His Evidence against *Turner*.

Dugdale. He agreed, in my Hearing, to all I have said before.

Turner. Where was this ?

Dugdale. At *Tixball*, at Mr. *Ewers*'s Chamber, and other Places, about two Years ago, at the Beginning of this Business.

Turner. I have not been in *Staffordshire* these four Years.

Mr. *Prance* was sworn.

Sir *Cr. Levins*. What can you say to any of the Prisoners ?

Prance. About a Year ago I made Mr. *Harcourt* an Image of our Lady to be sent to *Maryland*, and when he paid me the Money for it, he told me, There was a Design of killing the King. Prance's Evidence against *Harcourt*.

Sir *Cr. Levins*. What say you to Mr. *Fenwick* ?

Prance. I was with Mr. *Fenwick*, *Ireland*, and *Grove*, at Mr. *Ireland*'s Lodgings in *Russel-Street*, about a Fortnight before *Michaelmas* last, and they were talking of 50000 Men to be rais'd, to carry on the Catholick Cause, and settle the Catholick Religion ; and Mr. *Fenwick* told me, they were to be commanded by the Lords *Arundel*, *Bellasis*, *Petre*, and *Powis*. And two or three Days after, *Grove* came to buy some Silver Spoons of me, and he told me the same Thing. Against *Fenwick*.

Sir *Cr. Levins*. Had *Fenwick* any Discourse with you about Trade.

Prance. I ask'd him, What we poor Tradesmen must do if there were Civil Wars ? And he said, I need not fear, I should have Church-Work enough, in making Images, Chalice, Crucifixes, Vases, and such Things : And about a Week or eight Days before *Michaelmas*, being at Mr. *Fenwick*'s Chamber, he importun'd me that he might be my Confessor, for Father *James*, my Ghostly Father, was dead ; and I told him, When I came to Confession I would come to him ; and he enjoin'd me once or twice to say nothing of what I heard said.

Harcourt. Can you say that ever I spoke to you about any such Business ?

Prance. Yes, when one *Thomson* came with you, and you paid me 44 l. for four Candlesticks.

Mr. Bedloe was sworn.

L.C.J. What do you know of *Mr. Whitebread* and *Mr. Fenwick*?

Bedloe's Evidence
against *Whitebread*, *Fenwick*,
and *Harcourt*, with
an Account why
he smother'd his
Evidence at a
former Tryal.

Bedloe. I did not say half I would at the last Tryal, because I had engag'd to *Mr. Reading* to bring them off, that he might put a Confidence in me concerning my Evidence against the Lords in the Tower.

L.C.J. But what say you now to them?

Bedloe. I saw *Mr. Fenwick* at the Consult. And I heard *Whitebread* tell *Coleman*, at *Mr. Harcourt's* Chamber, the Manner of sending the four Ruffians to *Windsor* about September ——— And I saw *Harcourt* take eighty or a hundred Pounds out of his Cabinet for them, and pay the Messenger, and he gave the Messenger a Guinea, which *Mr. Coleman* left, to drink his Health.

Sir G. Levins. What was *Pickering* and *Grove* to have?

Pickering and
Grove employ'd
to kill the King,
and their Reward

Bedloe. The Sum appointed for *Grove* at *Mr. Harcourt's* Chamber was 1500 l. and *Pickering* was to have as many Masses said, as, at 12 d. a Mass, amounted to that Sum; and *Pickering* had been disciplin'd and check'd by his Superiors, for having miss'd so many Opportunities of killing the King: Once the Flint of his Pistol was loose, at other Times there was no Powder in the Pan, or he had loaded only with Bullets. — I never saw *Whitebread* but twice at *Harcourt's* Lodgings; and one of the Times, when *Harcourt* himself was there, *Sir George Wakeman's* Business was mention'd, and it was agreed, That since *Sir George* would not accept 10000 l. they would give him 15000 l. But *Ireland* said, The most certain Way of dispatching the King, was at his Morning-Walks at *Newmarket*; and *Fenwick* and *Conyers* went thither, and I heard there were to be seven or eight of them. — And *Mr. Harcourt* is no Stranger to my bringing over Packets and Portmantles from beyond Sea.

A Design to kill
the King at *New-*
market.

Harcourt. He never brought me but one Packet, and never brought me any Portmantle; nor did I

ever

ever see him but twice before I met him at the Privy-Council.

Bedloe. It must be more than two Packets I have brought over ; for I have brought Letters from *Watson, St. Omers, Bruges, Paris, Valledolid, and Salamanca*, and carry'd Answers, containing an Account of the Plot, and the Design of subverting the Government and altering Religion, what Forces might be rais'd here and Abroad, and what Contributions were made or expected ; and all or most of these were lodg'd in Mr. *Harcourt's* Hands : And I have been sent from Mr. *Harcourt* to *Langborne*, with Papers relating to this Affair, to register them.

Whitebread. Was *Bedloe* a Lieutenant of Horse or Foot in *Flanders* ?

Bedloe. I was a Lieutenant of Foot in the Prince of *Friezland's* Regiment.

Whitebread. Take Notice, there is no such Officer of Foot in *Flanders* ; there are only Captains and Alfers's. (Ensigns.)

Then *Bedloe* sent for his Commission to shew.

Harcourt. You say, you have had Papers from me, and been very familiar with me, when I never saw you but twice before I met you at the Council ; the first Time was five Years ago, when you brought Letters from *Dunkirk* : And in Confidence of that Service, he came to me a little after, and said, He was become a Roman Catholick, and had lost his Friends by it ; and desir'd I would assist him, and let him have a little Money, and he would repay me ; for he had some Friends he hoped would do something for him, tho' his Father had deserted him ; and I lent him Twenty Shillings, but never saw his Face afterwards.

Bedloe. Pray, Mr. *Harcourt*, was not you in Company with me and *La Fevre* in *August* or *September* last ?

Harcourt. I believe I did see him at that Time, but not since.

Bedloe. And farther, I saw Mr. *Harcourt* give Sir *George Wakeman* a Bill of Exchange for 2000 l. and tell him, that was in Part of a greater Sum.

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Bedloe's Evidence
of Sir G. Wake-
man's receiving
2000*l.* in Part of
15000*l.* for pay-
soning the King.

And Sir George said, That 15000*l.* was but a small Reward for settling Religion, and preserving three Kingdoms from Ruin; and if it were not for such a Woman, he would not undertake it, but for her he would do any Thing. And Sir Geo. Wake-
man read the Bill, put it up, and went and receiv'd the Money.

Then Mr. *Bedloe* produc'd his Commission, and some of the Judges look'd upon it.

After which, the King's Council produc'd a Letter that was found among Mr. *Harcourt's* Papers, from one *Petre*, a St. *Omers* Jesuit, giving an Account, that *Whitebread* had appointed a Consult in *April*, concerning some considerable Matters that requir'd Secrecy.

The Letter was to this Effect :

That the Provincial had appointed all those who had Suffrages at the intended Congregation to be in *London* the 21st of *April*, O.S. in order to its beginning the 24th; and if his Occasions would not permit him to be present, he should signify so much, that his Absence might be supply'd: And it was order'd, That none should go to *London* much before the Time, or appear in Town till the Consult was over, *lest Occasion should be given to suspect the Design.* Finally, says he, *Secrecy, as to the Time and Place, is much recommended to all those that receive Summons, was it ill appear of its own Nature necessary.*

L. C. J. Come, Mr. *Harcourt*, will you expound this Letter to me concerning this Meeting and Privacy?

Harcourt. It was not writ to me, but to one who had a Right to vote in our Congregation, which is held once in three Years; the chief Business whereof is the sending a Procurator to *Rome*; and Secrecy was very fit to be recommended, we living in a Country where we are an Eye-fore, and might give Offence by our meeting in such Numbers.

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L. C. J. This is but a forc'd Construction of the Letter. When I call a Thing by the Name of a Design, and tell you, that in its own Nature it requires Secrecy, shall this amount to no more than the chusing of an Officer?

White-

Whitebread. It is hard to bring so many Men's Lives in Danger upon the Interpretation of a Word, which may as properly signify the one as the other; and 'tis evident, there was a just Cause for Secrecy, because of our Profession.

L. C. J. Must all these Cautions be used merely for chusing an Officer.

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Gavan. My Lord, our Lives depended upon it, if we were taken.

L. C. J. I would appeal to your selves, If the natural Import of this Letter does not carry something more than ordinary in it; and unless you can give a better Answer to it, the Letter will hang about your Necks.

Otes. Mr. *Gavan* can tell now what this Consult was for, but he deny'd there was a Consult at the Council Board.

Fenwick. I did not deny it there.

Bedloe. Tho' Mr. *Gavan* says, It was in respect to the King and Parliament they would have their Consultations kept private, the Sessions of Parliament were the only Time we were employ'd to fetch them over.

Otes. More of them appear bare-fac'd in the Court of Request, and the Lobbies then, threatening the Protestants, than at any other Time.

Another Letter was produc'd by the King's Council, which was found amongst Mr. *Harcourt's* Papers, which had not any Thing material in it, unless it were the Word *Patents*, by which, the King's Council and *Otes* said, was meant Military Commissions which were to be sent over hither.

L. C. J. What is the Meaning of this Word *Patents*?

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Whitebread. They were the Patent for my being Provincial.

L. C. J. Is that *Patents*?

Whitebread. Every Patent is call'd *Litere Patentes*, tho' it be but for one Person.

Otes. My Lord, there were a great many of these Patents came down in *April* and *May*.

L. C. J. Methinks, he interprets them better than you do; but if you have any Thing farther to say in your Defence, begin, Mr. *Whitebread*.

The TRIAL of

Whitebread. I thank God, I am not afraid of Death, but would not die unjustly; a Man's Blood is dear to him, and Life is a Thing that ought not to be thrown away, but charily to be look'd after: And, without Contradiction, Mens Lives may be taken away by Perjury, as well as by a Knife or Pistol. No Man's Evidence ought to be admitted who is not *probus testis*, which Mr. Ores, who is brought to prove the Design mention'd in the Letter, is not; for I hope I may, without giving Offence to the Court, say, That he is perjurd.

L.C.J. You mean, that his Evidence is false; you may prove it if you can.

Whitebread. He tells you, He came over and was present with me here the 24th of April, and I order'd him to do such and such Things, and discover'd the whole Plot to him: Is it probable, I should be so very easy, to trust a Man in such a Business, whom, by his own Confession, I never saw till that Time; surely, I ought rather to have been sent to Bedlam than Newgate: Besides, he was a Man that had no Livelyhood or Subsistence, but what he had from us at St. Omers.

L.C.J. Is it a Wonder you should take into your Confidence a Man, whom, for a considerable Time, you had maintain'd Abroad.

Whitebread. My Predecessors had maintain'd him, but when I came to be Superior, I found him not fit for the Purposes he pretended to; for, first, it was doubtful if he were a good Catholick; and secondly, he led a very idle Life; and being very zealous to be entertain'd amongst us, I therefore desir'd him to absent himself and retire; and to that Purpose we gave him a good Suit of Cloaths, a Peruke, and four Pounds in his Pocket, which he promis'd to repay us again when he had sold his Library, which he boasted he had in London, but he never did. — And surely, my Lord, there is some Difference between doing a charitable Act to a Man in Want, and a Scholar, and trusting him in such an Intrigue as this: But, my Lord, to shew that he could not be at this Consult the 24th of April, I shall prove, that he

he was not out of *St. Omers* from the 10th of *December* to the 23d of *June*, above one Night. Then, my Lord, that I should write so plainly of a Design to kill the King, and send the Letter by the common Post directed to Mr. *Dugdale*, whom I never saw but once, is what your Lordship may justly wonder at.

Fennick. If your Lordship pleases to observe, the Tenor of this Man's Evidence, it is, That he saw such and such Letters. Now, is it possible I should show such Letters to a Man that had been turn'd away from *St. Omers* for his Misbehaviour? Besides, I had a thousand Letters taken upon me, in which, if produc'd, your Lordship will not find any Thing tending to a treasonable Design, nor had I convey'd any Thing away, nor dreaming of being apprehended; they took upon me five or six thousand Pounds in Bonds and Bills, as well as Letters; and it is strange this Design should not appear in any of them.

Mr. Fennick's Defence.

L. C. J. It is much more strange, that one such Letter should be taken, than that the rest should be undiscover'd. I believe Mr. *Harcourt* would not have permitted that Letter that has been read to have been surpriz'd, if he had thought it would have been of such Consequence, and the Sense have appear'd so criminal.

Then Mr. *Hilsley* was call'd, and the Prisoners desired he might be sworn, and quoted my Lord *Coke*, who says, There is not so much as *scintilla Juris* against it: But the Court inform'd them, the constant Practice was otherwise, and that my Lord *Coke* said, The Evidence ought to be so plain, that nothing could be answer'd to it, and therefore no Evidence ought to be sworn against the King.

The Evidence against the King not to be sworn in capital Cases.

Whitbread. In Mr. *Ireland's* Tryal, p. 35, *Otes* says, He came over with Sir *John Warner*, Father *Williams*, and Mr. *Hilsley*.

Mr. *J. Pemberton*. You can't resort to printed Tryals for Evidence.

Printed Tryals no Evidence.

Fennick. Did not you own, Mr. *Otes*, that you came over with Mr. *Hilsley*?

The TRIAL of

The Court up-
braid the Priso-
ners Witnesses
for their Relation
and Principles.

L. C. J. He is not convicted of Perjury, and therefore that must not be urg'd.

Otes. One Mr. *Hilsley* did come over with us.

Mr. *Hilsley* appear'd.

Hilsley. My Lord, that is false.

L. C. J. What Religion are you of? Are you a Roman Catholick?

Mr. J. *Pemberton*. Your Provincial can give you a Dispensation for what you say.

Hilsley. I hope a Roman Catholick may be a good Witness?

Otes. 'Tis true, Mr. *Hilsley* did leave me at St. *Omers*, he came away on the *Sunday* Morning, and I came away on the *Monday*, but I overtook him at *Calais*, and he lost his Money at *Calais*, and Father *Williams* did relieve him by my Means; and I remember, when we came over, he left us on the Road, and did not come up to *London* with us.

Hilsley. It is true, I did lose my Money, and that I staid by the Way, and I suppose he learn'd it from a Gentleman he was very familiar with the 2d of *May* after.

L. C. J. I speak seriously, I don't understand how he could come by these Things?

Otes. I desire he may answer if he be not a Priest?

L. C. J. That would be to make him accuse himself, and bring him within the Danger of Treason.

Mr. J. *Pemberton*. He is a Boy very fit to make a Jesuit of.

William Parry appear'd.

Parry. My Lord, I can make Oath, if I may be admitted, that *Otes* was at St. *Omers* that Day he says he came over; for I din'd with him that Day, and that Day he went into the Infirmary, being the 25th of *April*, O. S. and he fell out with a Gentleman in the Infirmary.

Fennick. How long did Mr. *Otes* stay at St. *Omers*.

Parry. He staid till after the 20th of *June*, for then he was present at a *Latin* Play.

Otes. My

Otes. My Lord, he is not only a Votary of the Jesuits, but has been of the Sodality several Years; and they are bound to say what their Superiors bid them. Besides, if it was the 25th of April, O.S. how could Mr. Williams let Mr. Hilsley have Money that Day at Calais, when Mr. Williams was, the 24th, O.S. at the Consult at London: And if he mean N.S. all that he hath said is false, unless it be that I was there the 20th of June.

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Mr. Recorder. He does not know New Stile from Old Stile.

Whitebread. I desire he may answer, If *Otes* was ever out of the House from the Time he came, in December, until June, but one Night.

Parry. No, never but one Night he was at *Watton*.

The Prisoners
Witnesses aver,
that *Otes* was at
St. Omers at the
Time he swore
he was at the
Consult.

L. C. J. Might not he go, and you not know of it.

Parry. Not a Scholar goes to England but the whole College rings of it.

Gavan. And when they go out, they put on Secular Cloaths, that every one must take Notice of it.

Otes. My Lord, that is generally true; but I put on the Habit of the House as soon as ever I return'd from London, and did not appear as if I had gone out of the House; nor can I say, that any one knew I had been out.

Whitebread. Whatever his Cloaths were, that did not alter the Place he sat in: And he being older than the Boys, had the Privilege of sitting in a particular Place, which must be observ'd by all the House at Dinner and Supper; he was visible every Day there.

Mr. Doddington appear'd.

Doddington. Mr. *Otes* came to the College a Fortnight before Christmas, and never went out of the College but one Night till the next June, except one Night at *Watton*.

L. C. J. Did you see him every Day, except that Day?

Doddington. I can't say every Day, because he was in the Infirmary once; and particularly that Day Mr. Hilsley went away.

L. C. J.

L. C. J. When did Mr. *Hilsley* go away?

Doddington. It was upon a *Sunday* the 24th of *April*, N. S. and I discours'd with him two or three Days in the Infirmary after Mr. *Hilsley* was gone; and I saw him walking the 2d. of *May* with Mr. *Burnaby* in the Garden.

The Court ask'd this Witness, What Name he went by at *St. Omers*? How old he was? When he came from *St. Omers*, and why? To which he answer'd, That he went by the Name of *Hollis* there; that he was eighteen Years old and an half; and that he came to *England* about two Months before, partly upon the King's Proclamation, requiring those who were in the Seminaries to return, and partly for his Health.

Mr. *Gifford* appear'd.

L. C. J. When came you from *St. Omers*? and upon what Occasion.

Gifford. I came from *St. Omers* a Month ago, to prove that Mr. *Otes* was there all that Time he says he was here.

L. C. J. When did you see Mr. *Otes* there?

Gifford. The 1st of *May*, when one Mr. *Burnaby* came to the College; and he was with us every Day after for a whole Week: And I remember, when Mr. *Hilsley* went away, he was in the Infirmary, and staid there for three Days.

L. C. J. And how long did you see him after Mr. *Hilsley's* Departure.

Gifford. I can swear I saw him, at least, till *June*, if I may believe my own Eyes.

L. C. J. Your Religion does not allow you to believe your own Eyes; do you know he went out of the College at any Time?

Gifford. Yes, he went to *Watton* for one Night.

L. C. J. How came you to take such particular Notice he was there?

Gifford. We could not but take Notice of him; for we dine all in one Room, and he had a distinct Table by himself, between the Boys and the Religious.

Mr. *Palmer* appear'd.

L. C. J. When did you come from *St. Omers*? and why?

Palmer. I

Palmer. I came from thence about two Months ago, because I had no Mind to stay longer.

L.C.J. When did you see Mr. *Otes* there?

Palmer. I saw him the 1st of *May*, N. S. by a particular Token. We had Strangers din'd at the College that Day, and I saw Mr. *Otes* and several other Boys playing at Nine-Pins that Afternoon.

L.C.J. Why do you call them all Boys? Do you count Mr. *Otes* a Boy?

Palmer. We call all Boys but the Religious, and he was none of them, tho' he sate at a Table by himself, he went to School with the Boys.

The 2d of *May* I saw him with Mr. *Burnaby*, and wonder'd at his Impudence for intruding into his Company, being a Gentleman he had never seen before; I saw him there the 6th of *May* when Mr. *Killingbeck* went away, and when Mr. *Poole* went away, who being a weak Man, Mr. *Otes* said, He did not go alone, for there went *Esquire Poole and Esquire Poole together*. The 11th of *May* I saw him at an Action or Play, and he would sit among the Musick, where no Body ever sate; and thereupon Mr. *Watson* quarrel'd with him, and they had like to have fought, and he did not stir away till *June*.

Sir G. Levins. Did not you go by the Name of *Sanders* or *Hill*, and were maintain'd at *St. Omers* by one *Cayll*?

Palmer. No, I went by the Name of *Palmer*; and my Father, *Sir Philip Palmer* of *Buckinghamshire*, maintain'd me there.

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Mr. J. Pemberton. He is Cup-Bearer to the King. Mr. *Cox* was sworn.

He depos'd, That he saw Mr. *Otes* at *St. Omers* in *April* and *May*, when he said he was in *England*.

L.C.J. When did he go away?

Cox. In the Month of *July* I am sure.

L.C.J. Why, he differs from all the rest.

Cox. Mr. *Otes* was not absent from *St. Omers* till the Consult of the Jesuits was over.

L.C.J. When was that?

Cox. It was after *May*, it's no Matter what the Month was, whether *June* or *July*; [Here the People

People laugh'd.] my Lord, If I prove he was not in *England* in *May*, it is sufficient.

L. C. J. Upon my Word you deserve a sharp Penance; you have done your Friends great Pejudice.

Gavan. Your Lordship will not take Advantage of every particular Circumstance; young Men may not remember the particular Day of his going away.

L. C. J. But he delivers his Evidence as if he was instructed; and says, This is sufficient; but we must have Proof to satisfy us. I ask you, Sir, to name the Month when Mr. *Otes* left *St. Omers*?

Gavan. If you don't remember the Time, say so.

Cox. My Lord, I cannot remember it.

Thomas Billing appear'd.

He depos'd, That *Otes* came to *St. Omers* the 10th of *December*, and staid there till the latter End of *June*; that he was twice in the Infirmary, and once at *Watton* during that Time: That he remember'd he was put to read in the Sodality the 25th of *March*, and that he read every *Sunday* Morning at six a Clock, from that Time till he went away.

L. C. J. Did he read when he was Sick in the Infirmary in *April*?

Billing. He was only a little indispos'd, and frequented the Infirmary in the Day Time for three or four Days; he was not Sick on the *Sunday*, as I remember,

L. C. J. Did you see him once in two or three Days?

Billing. Yes, I did constantly: And I remember, particularly, I saw him the 2d of *May* walking very familiarly in the Garden with Mr. *Blunt*, and wonder'd at his Impudence; and I remember that the same Day there happen'd some Words between *Otes* and one *Howard*, and *Howard* struck up his Heels, and *Otes* withdrew into the Infirmary, as we thought, to complain to the Rector; and by such Circumstances as these, I remember to have seen him every Day, or every other Day, till he went away in *June*.

Mr. Town.

Mr. Townley appear'd.

He depos'd, That he saw *Otes* at *St. Omers* in *April* and *May*, and till about the 10th of *June*, when he thought he went away. That *Otes* was the more remarkable, and the easier mis'd, because he was something between a Father and a Scholar, and sat at a Table alone between them.

Mr. Hall appear'd.

He depos'd, That *Otes* came to *St. Omers* about *Christmas* 1677, and went away the following *June*; and that he saw him almost every Day during that Time, but when he was at *Watson*; and that when *Otes* went into the Infirmary, he used to see him there.

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John Hall appear'd.

He depos'd, That he saw *Otes* at *St. Omers* all the Months of *April* and *May*, and till the 23d of *June*, when he went away; that the Deponent was Butler, and serv'd Mr. *Otes* with Bread and Beer during that Time, except when he was in the Infirmary, which, he thought, was four or five Days; that he had this Reason to remember him, that he laid his Table at a particular Place near the Door, where he always sat.

Juryman. What Employment have you now?

Hall. I live at Home with my Father, who is a Gentleman in *Radnorshire*; and I was summon'd to *London* for a Witness.

Cook appear'd.

He depos'd, That he came over from *St. Omers* in *January* last, to be a Witness; that he saw *Otes* all *April* and *May* at *St. Omers*; and that the Deponent being the College Taylor, and living in the College, he made Mr. *Otes's* Cloaths before he came away the 23d of *June*.

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Sir Cr. Levins. Why, there were 150 Scholars, can you tell every one that was absent all that Time?

Cook. I can't tell every one that was absent, but he was particular enough.

Mr. Belwood. Was *Otes* absent at *Watson*?

Cook. Yes, one Night in *April*, as it was talk'd among the Scholars.

GAVAN.

Gavan. *Otes* says in his Narrative, that he came over with *Sir John Warner* and *Sir Thomas Preston*.

L. C. J. If you could prove him forsworn at a former Tryal, you might make use of it; but then you should have indicted and try'd him for Perjury, and he could not have been heard.

Otes. My Lord, I own I did come over with the Rector of *Liege*, *Sir John Warner*, Father *Williams*, Father *Marsh*, Father *Warner*, *Sir Thomas Preston*, and others.

The Prisoners
Witnesses prove,
that *Sir John War-*
ner and *Sir Tho-*
mas Preston were
in *Flanders*, when
Otes swore he
came to *England*
with them.

Bartlett, a Dutchman, appear'd.

He depos'd, That *Sir John Warner* did not come to *England* in *April* or *May*, for he saw him all those two Months at *Watton*.

Carlier, another Foreigner, appear'd.

He depos'd, That *Sir John Warner* had been at *Watton* for two Years last past, and, particularly, that he was there all *April* and *May* was Twelve-Month.

L. C. J. How does he know it?

Interpreter. He says, That he was Gardener in the House.

Charles Vernon, another Foreigner, appear'd.

He depos'd, That *Sir John Warner* was at *Watton* all *April* and *May*, and continued there till *September*; that the Deponent used to go with a Vessel between *St. Omers* and *Watton*, and saw *Sir John* almost every Day.

One *Baillee* appear'd.

He says, He remembers *Sir John Warner* was at *Watton* all *April* and *May* was Twelve-Month; for that the Deponent being a Mason, *Sir John* gave him Orders for making a Bastiment, and daily gave him Directions about it.

John Joseph appear'd.

He depos'd, That he was Porter of the English House at *Liege*, and that *Sir Thomas Preston* was there all the Months of *April*, *May*, and *June*; for the Deponent saw him there almost every Day.

Peter Carpenter appear'd.

He depos'd, That he was Caterer in the English House at *Liege*, and that he saw *Sir Thomas Preston* there all the Months of *April* and *May*.

GAVAN.

Gavan. My Lord, my Case is different from the rest; Mr. *Oss* does not charge me with being present at the Consult; but says, He saw my Hand to it, and, indeed, I can prove I was at *Wolverhampton* at the Time of the Consult.

L. C. J. That will be to no Purpose. Might not you come to Town in *June* or *July* following, and set your Hand to what was agreed in *April*? He says, That he saw a Letter of yours, giving an Account of the Affairs of *Staffordshire* and *Shropshire*; and that in *July* afterwards, before Mr. *Asby* went to the *Bath*, he heard you talk of the same Affairs; now, if you will contradict him, you must prove that you were not here all *July*.

Catharine Winford was call'd.

Winford. My Lord, he was a Sojourner in my House at *Wolverhampton* most Part of the Summer, and particularly in *June* and *July*; but the 23^d of *July* he went from my House, and took a Lodging he thought more convenient for him in the same Town.

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Gavan's Witnesses depose, that he was in *Staffordshire* when *Oss* swears he was in Town.

L. C. J. Was he never away from you all that Time?

Winford. No; and after he went away I saw him every Day, or every other Day.

L. C. J. Are you a Roman Catholick?

Winford. Yes, my Lord, I am.

Mary Poole was call'd.

L. C. J. Do you know where *Gavan* was this Time Twelve Month?

Poole. He was at Mrs. *Winford's*, I was a Servant in the House then.

L. C. J. And where was he in *April* and *May*?

Poole. He was at my Mistresses then too, I believe; I do not remember his going forth till the latter End of *July*; and he was there in *June* too.

L. C. J. You answer readily as to *June* and *July*, why do you doubt whether he was there in *May*, any more than in *June*?

Poole. I do not doubt that he was there then.

L. C. J. But why did not you answer to that Time as readily as to the other?

Poole. Any

Pool. Any one may mistake.

L. C. J. This you came prepar'd for. Are not you a *Roman* Catholick?

Pool. Yes, my Lord.— *Here the People laugh'd.*

The Chief Justice
falls upon the
Principles of the
Papists, and the
People shout.

Then my Lord Chief Justice said, He acknowledg'd Papists were competent Witnesses; but fell foul upon their Principles and Practices. *At which the People shouted.*

L. C. J. You must pardon the Peoples Shouting, for you have so turn'd their Hearts, that a Papist will hardly be able to live in *England*, I'll maintain it. *Here the People shouted again.*

Gavan. If there be but a Place in Heaven for us, I am contented. Pray ask Mrs. *Winford* if she remembers I came from my Lord *Aston's* the Monday before.

Winford. I cannot recollect my self.

L. C. J. Did he go to any Gentleman's House some Time before he left yours.

Winford. He went often Abroad to my Lord *Aston's*.

L. C. J. Did he ever stay there five or six Days.

Winford. I cannot tell.

L. C. J. My Meaning is, if he might not make a Step to *London*, and you be never the wiser.

Winford. I am as confident as I can be of any Thing in the World of the contrary; for I used to order my Maid to get his Linnen ready upon a Journey, and he had none.

Ores. My Lord, he took another Chamber to go into the Exercise: Now, my Lord, he might take it on that Pretence, and come to *London* in the mean Time, because he was to be shut up, and none to come near him.

L. C. J. Are these People shut up at a certain Time, that there is no coming near them? When went he first into this recluse Way?

Winford. He went from my House the 23d of *July*; but yet most of those last eight Days in *July* I saw him. He was shut up indeed; but upon such an Occasion, as the carrying him Linnen, or a Pair of Gloves, or sometimes to speak with him about Business, we were admitted.

L. C. J.

L. C. J. Can you say that it was not possible for him to step to *London*, and you not know it, in those Months of *June* and *July*, when you acknowledged you were not positive, but he might be absent five or six Days?

Winford. He was not absent long enough to do it; and I do not believe he did, because he had no Linnen with him.

Gavan. Let me speak, for an innocent Man will be lost else. *Otes* says, expressly, I was in Town in *July*, and gives this Reason for it, That Mr. *Asbby* was in Town; and he met me with him.

L. C. J. Mr. *Otes* is not positive whether it was *June* or *July*.

Otes. Mr. *Asbby* came to Town either the Beginning or Middle of *July*, and while he staid in Town Mr. *Gavan* came up.

L. C. J. Call your Witnesses then, Mr. *Gavan*, and prove expressly where you was the Beginning of *July*.

Gavan. My Lord, be pleas'd to hear the Words of an ingenuous Man. As I was innocent, and did not know what I should be charg'd with, I ran over in my Mind all that I had done that they could lay hold off; I ran sack'd my Memory, and scann'd all the Passages of my Life, that could give them any Handle to accuse me: And because I imagin'd they might think I was here the 24th of *April* at the Consult, I brought Witnesses to disprove that.

L. C. J. But you have not one Protestant that testifies for you.

Gavan. My Lord, I humbly cast my self upon the Honour and Justice of this Court, I have used all the Remedies I can; but since there is only his Oath and my Denial, I shall make this one Demand. This learned Court knows, that in the Beginning of the Church, for the first thousand Years, where there was only the Accuser's Oath, and the Denial of the Party charg'd, the Prisoner used to put himself upon the Tryal *Ordeal*, to evi-

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Gavan's Defence.

Offers to put him-
self on the Tryal
Ordeal.

But is told we
have no such
Law, and that he
did it to amuse
the People.

L. C. J. We have no such Law now; this is only an artificial Varnish, which you think will take with the Audience, and it may indeed with the Roman Catholicks: They may believe you innocent, upon your offering to undergo this Tryal, and think it a great Hardship it should be deny'd you; but you know you ask what you can't have, and you must not think to impose upon us by these Artifices. Our Eyes and Understandings are left us, tho' you will allow your Profelytes neither.

Gavan. Is there any Harm in asking, if I may not be so try'd?

L. C. J. The Time is far spent, therefore if you have any Witnesses, call them.

Then Mr. Gavan call'd four other Witnesses, who depos'd, That he was at *Wolverhampton* the last Week in *July*, for he lodg'd in the same House with them; and one of them said, He was confident Gavan was at *Wolverhampton* the last Fortnight; and, another, that he did not remember he was absent any Part of *July*.

L. C. J. Mr. *Whitebread*, have you any Witnesses to call.

Whitebread. I desire I may prove that Mr. *Otes* was mistaken in the Evidence he gave at the Tryal against Mr. *Ireland*.

L. C. J. If you wou'd contradict a Witness, you ought to do it in a Matter which is at present in Debate; for if you wou'd convict him of what he said at *Ireland's* Tryal, we must try *Ireland's* Cause over again.

Whitebread. If he be convicted of Perjury in one Case, he is not to be believ'd in another.

L. C. J. You say right, if he be convicted; but then you must shew the Record of his Conviction.

Whitebread. I desire the Jury would observe, that *Otes* does not stick to the Testimony he gave at *Ireland's* Tryal.

L. C. J. They must not take Notice of any Thing that was done at a former Tryal, except it be spoken of now.

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The Jury can take
no Notice of what
was done at a former
Tryal.

Harcourt.

Harcourt. If our Witnesses can't be look'd upon as good Witnesses, there can be no Commerce with any other Country: I am charg'd with several Things by *Bedloe*, *Prance*, *Otes*, and *Dugdale*; if the Witnesses, I bring, are not to be believ'd, because they are Roman Catholicks, I am in a hard Case.

L. C. J. North. By our hearing them, it shews we look upon them as good Witnesses, or we shou'd not hear them at all; but a Witness is of more or less Credit according to the Circumstances; therefore it is a proper Question, in this Case, to ask them if they be Roman Catholicks.

Harcourt. My Lord, the Witnesses, on the other Side, are every one of them known to be bad and flagitious Persons; they are Men of desperate Fortunes, and get a Living by swearing. — My Lord, *Mr. Otes* swears that *Mr. Ireland* was by when the 80*l.* was paid at my Chamber in *August*, and I have Witnesses to prove he was then in *Staffordshire*.

The Prisoners urge that the Witnesses against them are Men of infamous Characters.

Otes. I never said such a Word.

Gauw. And he said, That the 2d of *September* he borrow'd 20*s.* of *Mr. Ireland* at his Chamber, when *Mr. Ireland* was at *Boscobel*.

Otes. I was not positive to the Day.

Gifford. My Lord, I was here at that Tryal, and testify'd I saw *Mr. Ireland* in *Staffordshire* the 24th of *August*, being *Bartholomew Day* and the Day after: Then says *Otes*, I cannot be so particular as to that; but the 1st or 2d of *September* I saw *Mr. Ireland* at *Mr. Harcourt's* Chamber by this Circumstance, for I then borrow'd 20*s.* of *Mr. Ireland*.

Mr. J. Pemberton. Do not insist on that, it hath receiv'd a Tryal.

L. C. J. North. Come come, you must not charge him with what he said in *Ireland's* Tryal.

Otes. My Lord, I charge *Harcourt* and not *Ireland* with being at *Wildbouse*, and that there *Coleman* met him, and the Money was carry'd back to *Harcourt's* Chamber, and there given to the Messenger.

The TRIAL of

L. C. J. I am mistaken if you have not testify'd that *Ireland* was in Town in *August* and *September* with *Harcourt*. They must have Right done them, they say: People may swear Things down-right, but we must be at Liberty to disprove them as we can.

Otes. My Lord, I said that Mr. *Ireland* took his Leave of us between the 8th and 12th of *August*, at Mr. *Harcourt*'s Chamber, and Mr. *Fenwick* was there.

L. C. J. Did not you say that *Fenwick* convers'd with *Ireland* in *August* concerning the carrying on of the Plot.

Otes. Yes, my Lord.

L. C. J. In doubtful Cases, when Men are for their Lives, I had rather hear what is impertinent, than prevent Men making a full Defence.

L. C. J. North. I had rather hear Things at a Venture, than forbid Things at a Venture.

The Lady *Southcott* appear'd.

She testify'd, That *Ireland* was with her from the 5th of *August* to the 15th.

Sir *John Southcott* appear'd.

My Lord, Mr. *Ireland* travel'd with us from the 5th of *August* to the 9th. We went from St. *Albans* to my Lord *Aston*'s at *Tixhall*; I saw him there the *Thursday*, *Friday*, *Saturday*, and *Monday* following, and on *Tuesday* he went with us farther into the Country; and I saw him the *Wednesday*, *Thursday*, and *Friday* afterwards: I saw him at least twelve Days.

Sir *Edward Southcott* appear'd.

The 2d of *August* Mr. *Ireland* came down to my Lord *Aston*'s at *Standen*, as they said, but I saw him there early next Morning; the 5th we went together to St. *Albans*, and so kept on to *Tixhall*; I was in his Company from the 4th to the 16th.

Mrs. *Harwell* and her Daughter appear'd.

They depos'd, That Mr. *Ireland* came to their House at *Wolverhampton* in *Staffordshire*, the 17th of *August*, and was there till the 26th, except one Day when he went to *Litchfield*.

Elizabeth

The Prisoners prove that *Ireland* was not in *London*, when Otes swore he was at Mr. *Harcourt*'s there.

Elizabeth Keyling appear'd.

She depos'd, That she saw *Mr. Ireland* at *Wolverhampton* on *Saturday* the 17th of *August*, and that he was there 'till the *Monday* following, when the Deponent went to see her Mother; that she found him there when she return'd thither the next *Thursday*, and he continu'd there 'till the 26th.

Mr. Pendrel and his Wife appear'd.

They depos'd, That they kept the *Royal Oak* at *Boscobel* in *Staffordshire*, and that *Mr. Ireland* din'd there the 2d and 3d of *September*.

L. C. J. You might as well have left such trivial Evidence as this alone.

Mrs. Gifford appear'd.

She depos'd, That she saw *Ireland* at *Wolverhampton* the 17th of *August*, and that he staid there 'till the 26th; that she saw him also the 2d, 7th, 10th, and 11th Days of *September*.

L. C. J. Was it the same that was executed.

Mrs. Gifford. My Brother, who saw him executed, said it was the same.

Mr. Gifford. I saw him in the Country, and saw him executed.

Another *Mrs. Gifford* appear'd.

She depos'd, That she saw *Ireland* at *Pancras Fair* in *Staffordshire*, the 7th of *September*, and that she afterwards saw him try'd.

Mr. Bedle appear'd.

He depos'd, That he saw *Ireland* at *Millage* in *Staffordshire* the 2d of *September*.

Captain Hill was call'd.

He depos'd, That *Bedloe* was a Prisoner in the *Marshalsea*, and liv'd upon the Common Basket.

L. C. J. But he might be an honest Man for all that.

Mr. Whitbread. *Mr. Bedloe* at my last Tryal depos'd, That he had nothing to say against me, and now he charges me with great Matters, so that 'tis evident he has falsify'd his Oath; for if he was then sworn to depose the Truth, the whole Truth, and nothing but the Truth, and he did not swear the whole Truth, he was perjur'd; and if he did do it then, he can have nothing against me now.

Whitbread shows that *Bedloe* must be perjur'd at one of the Tryals.

L. C. J. *North*. He says he was in Treaty with *Reading*, and, to beget a Confidence in him that he would serve the Popish Lords and bring them off, he was easy to you, and lessen'd his Evidence at that Time: You have your Objection, and it ought to be observ'd to the Jury; but repeating of it now signifies nothing.

Sir Cr. *Levin* Observations on the Evidence.

The Prisoner producing no more Witnesses, Sir *Cr. Levin* made some Observations upon the Evidence that had been already given: And first, He took Notice that a great Part of the Prisoners Defence consisted in endeavouring to invalidate the Testimony of Mr. *Otes*; but that as to *Whitebread*, *Fenwick*, and *Harcourt*, there were two Witnesses besides Mr. *Otes*; and as to Mr. *Otes*'s Testimony, he did not Doubt to make it appear credible, notwithstanding their Objections: That as to *Hilsey*'s saying he did not come over with him, there was *Otes*'s Oath on the other Side, who had fortify'd his Testimony by that Circumstance of *Hilsey*'s losing his Money at Play as they were coming: That as to the rest of *St. Omers* Witnesses, how exact soever they were as to the 1st of *May*, which was the Point of Time in Dispute, as to the other Times, they had appear'd to be mistaken, and to differ from one another more than eight Days, which was as much Time as the King's Council requir'd for *Otes*'s Journey hither; and altho' the *St. Omers* Witnesses were so very positive as to those eight Days in particular, yet they being mistaken more than that in other Times they were examin'd about, their Testimony was not to be rely'd on as to the Time they mention'd. — He insinuated also, That the Witnesses were not positive that Sir *Tbo. Preston* and Sir *John Warner* were at *Liege* and *Watton* at those Times they were brought to prove them there; and said, that *Gavan*'s Witnesses could only testify positively his being at *Wolverhampton* the last Week in *July*, from whence he infer'd he was not there at the other Times they spoke to, in which they were less positive: As to that Number of Witnesses who had said Mr. *Ireland* was out of Town in *August*, when Mr. *Otes* had sworn he was in Town, he insinuated, That Mr.

Otes's

Otes's Oath ought to be reckon'd equivalent to their Testimony, because they did not deliver it upon Oath; and, besides, he had another Witness to corroborate what *Otes* had depos'd on that Head: Whereupon

Sarah Paine was call'd.

She depos'd, That she had liv'd at Mr. *Grove's*, where Mr. *Ireland* us'd to come, and she knew him very well; and from Mr. *Grove's* she went to live with the Lord Chamberlain, and that she saw Mr. *Ireland* at his own Door in *Russel-Street*, about seven or eight Days before, which was a Week before the King went to *Windfor*; that she saw his Face, and made him a Curtesy, but did not speak to him.

Otes produces a Witness to corroborate his Testimony concerning *Ireland's* being in Town.

Sir Thomas Doleman was call'd.

L. C. J. What Time in *August* did the King go to *Windfor* last Summer?

Sir Tho. Doleman. I can't charge my Memory; but I believe it was the 12th, or 13th.

William Walker was sworn.

He depos'd, That he met Mr. *Otes* in *St. Martins Lane*, going towards *Leicester Fields*, the latter End of *March* or the Beginning of *April*, 1678; that he was disguis'd in a grey Searge Coat, and a grey Hat; that he cou'd not recollect who it was then, but the next Morning he remember'd it was *Tissie Otes*, and that he went to a Gentlewoman's where he had seen *Otes* a Year before, and ask'd her how Mr. *Otes* did, and she said he was turn'd Papist and absconded, and she did not know where he was; and that the Deponent told her he had seen him about 9 or 10 a Clock the Day before.

And as to his own being here at the Time of the Consult.

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Mrs. Ives was sworn.

She depos'd, That about the Middle of *April* was Twelvemonth, Mr. *Walker* came to her, and ask'd her, When she had seen Mr. *Otes*, and she answer'd, Not since he went beyond Sea, and Mr. *Walker* said, He saw him in a Disguise the Day before in *St. Martins Lane*, as he was going to *Leicester Fields*, and that they look'd withfully at one another, and he was sure it was he.

Several other
Witnesses depose,
he was in London
at the Time of
the Consult.

Mrs. *Mayo* was call'd.
She depos'd, That she was a Servant of Sir *Richard Barker's*; and that about a Week before *Whitsontide*, (which, she said, was in *May*) *Otes* came thither, disguis'd in a white Coat and a Peruke; that she had never seen him before, but a young Man who was in the Family told her, it was he, and was laughing at him for his Habit; that about a Week after he came again, and brought another with him; that he walk'd in the Garden, and seem'd discontented the Family took no more Notice of him; and that indeed the Family had heard he was turn'd Catholick, which was the Occasion of it: That she went to see Mr. *Otes* afterwards, when he came to give his Evidence about the Plot, and she was sure it was the same Man she saw in *May*, the Week before *Whitsontide*, at Sir *Richard Barker's*.

Page was sworn.

Page 314.

He depos'd, That he was Servant to Sir *Richard Barker*, and that in the Beginning of *May* last Year (1678), *Otes* came and enquir'd for Sir *Richard Barker*; that the Deponent knew him, and ask'd him, where he had been for so long Time? but he gave him no Account; and that after *Otes* had been in the House, he went away again: That he remember'd he had a light-colour'd Campaign Coat on, and a black flapping Hat on, and *Spanish Leather Shoes*.

L. C. J. How do you know this was in *May*? Might it not be in *April*?

Page. Because my Master had a Patient then sick of a Fever at *Islington*.

Juryman. We would know what that Patient's Name was?

Sir *Richard Barker*. It was ——— *Milver's* Daughter.

Sir *Richard Barker* was sworn.

He depos'd, That he had known *Otes* from a Child; and that he saw him last Summer in *June* or *July*, he thought it was in *June*, but that his Servants, particularly his Coachman, told him, they had seen him in *May*, before *Whitsontide*, and that he was in two several Disguises, once he had short

short Hair, and then they thought he was turn'd Quaker; another Time a long Wig, and then they thought he was turn'd Papist; and that he came to enquire for Dr. Tongue.

Butler, Sir R. Barker's Coachman, was sworn.

He depos'd, That the Beginning of May was Twelve-Month, Otes came to his Master's House in Barbican; that the Deponent was cleaning his Coach in the Gate-House, and Otes came and ask'd him for Dr. Tongue, whom the Deponent told him was not at Home; however, Otes went into the House, and return'd immediately again, and seem'd very much discontented as he pass'd by: That his Hair was cropt close to his Ears, and he had a grey Coat on; and that the Deponent saw Otes about six Weeks after, and he had a long black Coat and a Peruke on.

L. C. J. How soon, Sir Richard, did he tell you Otes was first there?

Sir Richard Barker. He told me as soon as I came Home; in May as I remember, and told me what Habit he was in, and I wonder'd at it.

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Smith was sworn.

He depos'd, That he knew Otes very well, for he was a Scholar at Merchant-Taylor's School when the Deponent was Usher; and that Otes din'd with the Deponent at his House at Islington the Beginning of May last, viz. the first Monday in May 1678; that he had a Summer Suit on, and a green Knot upon his Shoulder; and that they discours'd of Otes's Travels, and of his having been in Spain and Flanders; and that the Deponent knew of his being turn'd Catholick then; that the Deponent did not see him any more till about the Middle of August.

Clay, the Priest, was sworn.

He depos'd, That he met Mr. Otes at Mr. Charles Howard's in April was Twelve-Month, and that he thought he saw Otes there a second Time in May.

Whitebread. At my first Tryal, when Otes was press'd to declare who had seen him here in Town, he could not name one, but said, He had not seen much Company, and staid but six Days:

Whitebread observes, that Otes contradicted his own Witnesses.

Now

Now, he came over, he says, the 17th of *April*, and his Witnesses say, he was here the Beginning of *May*, which must make him here a great deal above six Days. How inconsistent are these Things?

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L. C. J. You make your Defence to depend upon an Uncertainty of Time, which no Man can ever remember; and pray observe, Mr. *Otes* appears a good Witness, till you impeach his Testimony by a Fry out of your own Schools, who swear to *April*, *May*, and *June*, in which they are contradicted by the other Witnesses, who thereby make Mr. *Otes* an upright Witness again. The Evidence is now concluded; say what you can for your selves, and we will observe what you object, and direct the Jury according to our Consciences.

Gavan proceeds in his Defence.

Gavan observ'd to the Court, That he was charg'd by one Witness, with a Fact committed in *London*, and by another Witness, with another Fact committed in *Staffordshire*, which was in another County; and he desir'd to be advis'd, whether these could be deem'd two Witnesses, such as the Law requir'd, to convict him of Treason? To which the Court answer'd, That this Matter had been settled at the King's-Bench Bar in Sir *Henry Vane's* Case, who being indicted for levying War; and one Witness proving the levying War in one County, and the other his levying War in another County, tho' they were but single Witnesses of single Facts, yet both coming up to the Charge in the Indictment, they were adjudg'd sufficient to maintain it: So here, if one Witness prov'd a Conspiracy to kill the King in this County, and another proves a Consult with other Persons against the King's Life in *Staffordshire*, these are two Witnesses to the same Treason, and sufficient in Law.

If one Witness proves an Over-Act in the County where the Indictment is brought, another Witness may prove another Over-Act in another County, and that is sufficient to convict a Man of Treason.

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Then *Gavan* address'd himself to the Jury, and made Protestations of his Innocence, and averr'd, That he was not of Age to be at the Consult in *April*, and appeal'd to them, Whether the two Witnesses produc'd against him could be deem'd credible Witnesses; saying, No Man could be deem'd

deem'd a good Witness who was not an honest Man. Then he insinuated, That Mr. *Ores* being turn'd out of the College at *St. Omers*, and disgusted, that might be the Ground of his Malice against them. Besides that, *Ores* had been falsify'd in his Testimony as to Sir *Thomas Preston* and Sir *John Warner's* coming over; and as to *Ireland's* being in *London* in *August*, by sixteen Witnesses, who had prov'd him to be in *Staffordshire*; and that tho' he was not convicted of these Perjuries before, yet they made him appear no credible Witness; nor could the Testimony of the Woman, who only said, She saw *Ireland* and made a Curtesy to him, be thought equivalent to those sixteen Witnesses who convers'd with him daily in *Staffordshire*; and that *Ores* evidently confuted his own Witnesses by affirming, He came over with *Hilsley*, and staid but six Days, when they make him here in *May* many Days after. —

That as to the Witnesses not being so positive of his being at *Wolverhampton* the rest of *July*, as they were of the last Week, there was great Reason for it, because he was then shut up in his spiritual Exercise; and for the other Weeks, they rather believ'd him there than not, and left it to them, whether it was probable he was with Father *Ashby* in *London*, when *Ores* swore *Ashby* came to *London* the Middle of *July*, and staid there but a Fortnight. He confess'd, He knew *Dugdale* at my Lord *Ashton's* five or six Years, and had convers'd with him in Mr. *Emers's* Chamber, but never of any treasonable Matter; but that *Dugdale* ran away from my Lord *Ashton's*, having lost 300 l. of my Lord's Money. — The Court told him, He must not tell a Story out of this or that Lord's Mouth, or fall upon the Witnesses, unless he had Evidence to prove what he charg'd them with. — *Groom* desir'd the Court would compare the Number of the Witnesses they brought to prove *Ores* at *St. Omers* with those that depos'd he was here, and that they would consider, those young Men at *St. Omers* eat and convers'd with him every Day; whereas the other Witnesses spoke but to one or two particular Days,

Days, and one of them saw him but in a Disguise. Then he concluded and said, That as he hoped to see the Face of God he was innocent of what he was charg'd with; and pray'd God to bless the King and the honourable Court.

Whitebread insists on the Improbability of the Evidence given against him.

Whitebread repeated his Observation of the Improbability of his putting those Words in the Letter to Mr. *Ewers*, That he should provide stout Men, who were hardy and desperate, to kill the King; and said, He did not look like a fighting Man, and if he was, no Man could think him so mad to beat one to whom he had committed such a Secret as *Ores* had depos'd. And he said, It was strange there should be a Plot wherein it was pretended so many Persons of Honour and Quality were concern'd, and yet no Footsteps of it appear; and then he commended himself to God Almighty and the Jury.

As does Fenwick,

And urges the scandalous Lives of their Accusers, to invalidate their Testimony.

Mr. *Fenwick* urg'd, That it was not probable that so many innocent Children, brought up in a virtuous Life, should come over to attest a Falsehood; and that the Witnesses on the other Side were People of a poor beggarly Condition, who thought to advance their Fortunes by such a pretended Discovery: That it could not be suppos'd they should trust *Ores* with the Sight of such Letters and such Secrets as he pretended, being a Person they never esteem'd, and had expell'd the College; that none of the Commissions or Letters he mention'd appear'd, or could it be prov'd that any Money was paid, or Arms provided, tho' it was three Quarters of a Year since the first Discovery; and that there was no manner of Reason to induce the Jury's Belief of what he said, nothing but downright Swearing. Then he repeated several other Arguments that had been urg'd before by Mr. *Gavan*; and added, That no Body could blame their Lives, or show they had been guilty of any Thing before; but the World knew how scandalously their Accusers had liv'd.

Harcourt said, he was 70 Years of Age, and had never been charg'd with any Crime before, and hoped Innocence would find some Advocates upon the Bench.

Mr. *Harcourt* said, He had liv'd to seventy Years of Age, and had never before been accus'd of any Thing for which he could be brought before a Magistrate; and having repeated some of the

Argu-

Arguments that had been urg'd before, said, He left himself to the Bench, and hoped Innocence would find some to defend it; and that if their Accusers had brought any Reason to concur with their positive Oaths, it had been something.

Mr. *Turner* only demanded, If *Otes* and *Bedloe* ought to be deem'd credible Witnesses, who, for their scandalous Lives, had been debarr'd the Sacrament; for Proof whereof he call'd one *Hastings*, but he did not appear.

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Turner only objected the infamous Characters of the Prosecutors.

Then the Lord Chief Justice gave his Directions to the Jury. He told them, That the Testimony of the Witnesses from *St. Omers* was of much less Weight than the Evidence that had been given on the other Side, not only because it was upon Oath, (tho' he doubted not but the *St. Omers* Lads would have sworn it if they might) but because the Testimony of a Papist was not to be credited, with or without Oath, since they were of a Religion that could dispense with Oaths, tho' false, for the Sake of a good Cause. —

The Lord Chief Justice directs the Jury.

And tells them, That Papists would say or swear any Thing to promote their Cause, and therefore the Testimony of the Prisoners Witnesses, how numerous soever, was not to be regarded.

That therefore the Testimony of these young Men, who had been sent for for this Purpose, and had been train'd up in such Principles, was very much to be suspected. He observ'd, That the Prisoners Defence consisted in catching at a Point of Time; but that was a Thing no Man could charge his Memory with. (Say they) If *Otes* came here the 20th of *April*, how could they see him here the 1st of *May*? But he told the Jury, They were not to govern their Judgments by a Mistake of seven or eight Days; and appeal'd to them, if they were not often mistaken a Week, or a Month, in their ordinary Affairs; tho' he did own, this Circumstance was considerable, yet he said, they should not lay too great a Weight upon it. That altho' there had been Witnesses produc'd to prove, that *Sir Thomas Preston* and *Sir John Warner* did not come over with Mr. *Otes* as he had sworn; yet if the sixteen from *St. Omers* were not to be believ'd, neither were they; for they never wanted Witnesses to prove what they pleas'd, none of them made any Bones of it. Then he insisted much on

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And that a Mistake of 7 or 8 Days ought not to influence their Judgments, tho' *Otes* and his Witnesses seem to differ about the Time of his being here.

Mr. Har-

In fits much on
Mr. Harcourt's
Letter about Sir
E. Godfrey.

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And says, the
Plot was suffici-
ently prov'd by
that.

Then he in-
veighs against the
bloody Principles
and Practices of
the Papists.

Not says at length,
that those Cir-
cumstances, in
Point of Time,
which the Priso-
ners insisted on,
were of Weight.

He opposes the
Verdict against
Ireland, to the
Testimony of the
Witnesses who
depos'd he was
out of Town, and
then concludes.

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The Prisoners are
all convicted.

Sir Geo. Jefferies
Recorder.

The Recorder ap-
proves the Ver-
dict.

Mr. Harcourt's Letter, which Dugdale intercepted the Monday after Sir E. Godfrey was missing, wherein is that Expression, *This Night* Sir E. Godfrey is dispatch'd, which was the Saturday Night the Letter was dated; this, he said, was an undeniable Evidence that the Papists murder'd him, because he was not known to be dead till the Thursday following by other People; and this, he said, must turn every Protestant's Heart against them, and that the Plot was in a great Measure prov'd by that Murder. Then he observ'd to the Prisoners, That this was but a Specimen of what they intended, and none knew where they would end; that they had kill'd but one Man's Person, but in Effigy the whole Nation; that it was but in one Man's Blood their Hands were embro'd, but their Souls were dipp'd in the Blood of all; and that they would kill the King, or any Body else, that stood in the Way of their Religion. — A Religion which, he says, they would bring in upon us by a Conversion of us with Blood, and by a Baptism of Fire. — After this Digression, he said, That tho' the Prisoners Defence depended on a Point of Time, yet it ought to be well consider'd, and God forbid but they should be equal to all Men: But then he added, That as to the Prisoners disproving Ores to be here, or Mr. Ireland's Absence in August, they were not the proper Business of this Day, but had receiv'd a Verdict before; and that if Ireland's Jury had not been satisfy'd he was in London, they could not have found him Guilty; and then he left it to them, and bid them consider of their Verdict.

After a Recess of a Quarter of an Hour, the Jury came in with their Verdict, That they were all Guilty.

Then (the Judges being gone off the Bench) Mr. Recorder said, That the Prisoners had not been wanting to themselves in offering, nor the Court in hearing what they could say for themselves, but upon a long Evidence, and a full discussing of all the Objections, they had been found Guilty; and he thought every honest Man would say, They

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They were unexceptionably found so, and that it was a just Verdict the Jury had given.

N. B. After Mr. Langhorn was try'd, they receiv'd their Sentence with him.

The TRYAL of RICHARD LANGHORN, Esq; at the Old Bayly, London, the 14th of June, 31 Car. 2. 1679, for High Treason.

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THE Indictment sets forth, that the said *Richard Langhorn*, on the 30th Day of September, in the 30th Year of the King, at the Parish of St. Dunstons in the West, in the Ward of Farringdon without, London, did traitorously compass and intend to stir up Sedition and Rebellion, to depose his Majesty and put him to Death, and to subvert and alter the Government and Religion establish'd. And to that purpose, at the Time and Place aforesaid, did, advisedly, maliciously, and traitorously, contrive and write two Letters, to be sent to Persons unknown at Rome and St. Omers, to procure the Aid and Assistance of the Pope and the French King. And that, in farther Prosecution of the said Treasons, the said *Richard Langhorn*, at the Time and Place aforesaid, did contrive and write two other Letters, to be sent to Rome, to *Christopher Anderson*, Rector of the English College there, and two other Letters, to be sent to St. Omers, to divers Persons unknown there residing. And that, by the said respective Letters, he did traitorously advise the Pope, and the said *Christopher Anderson*, and the said other Persons unknown, of the Ways and Means for accomplishing the aforesaid Treasons, and did solicit their Aid and Assistance therein: And that the said *Richard Langhorn*, the Day and Year aforesaid, did deliver out the said Letters, to be sent to the Persons aforesaid. And the Indictment farther sets forth, That the said *Richard Langhorn*, in farther Prosecution of his said traitorous Purposes, did receive

The Indictment for High Treason, in compassing the King's Death.

1. Overt Act, Writing Letters to solicit Aid from the Pope, &c. and sending them.

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2. Receiving Commissions for Civil and Military Offices from Rome, and distributing them.

3. Consenting to the Jesuits Conspiracy to kill the King, and procuring 6000*l* of the Benedictine Monks for that Purpose.

4. And abetting Coleman's Conspiracy.

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ceive five several Commissions in Writing, made by Authority deriv'd from the See of Rome, for constituting military Officers to command the Forces to be rais'd in these Kingdoms, for executing the Treasons aforesaid. And that he likewise receiv'd five other Commissions, for constituting Civil Officers in this Kingdom, after these Treasons should be perfected: And the same Commissions did deliver out and distribute to divers false Traitors, to the Jurors unknown: And that he also receiv'd a Commission for himself to be Advocate General to the Army intended to be rais'd. And the Indictment farther charges, That whereas *Ireland, Pickering, and Grove*, together with other false Traitors, did, on the 24th of *April*, consult and agree to kill the King, and alter the Religion, &c. The said *Richard Langhorn* was privy to the said last mention'd Conspiracy, and did traitorously conceal and consent to the same, and did aid, council, and abett the said *Ireland, Pickering, and Grove* therein: And farther, that on the Day and Year aforesaid, the said *Richard Langhorn* did move and solicit the Benedictine Monks to expend and pay the Sum of 6000*l*. to procure a Person to kill the King: And whereas *Edward Coleman*, and other false Traitors, had form'd a Conspiracy to destroy the King, and subvert the Government and Religion establish'd, and that *Coleman* had written to *Le Chaise*, the French King's Confessor, to procure the Assistance of the French King to accomplish his said Treasons, the said *Richard Langhorn*, being privy to the said last mention'd Treasons, did comfort, council, and abett, the said *Edward Coleman* to perpetrate and accomplish the same, against the Duty of his Allegiance, the King's Peace, &c.

The Jurors being call'd, the Prisoner made no Challenges, and a Jury was sworn. Then Mr. *Roger Belwood* open'd the Indictment, and Sir *Cr. Levins* exaggerated the Charge against the Prisoner. After which Mr. *Dugdale*, one of the King's Witnesses, was sworn.

Dugdale

Dugdale depos'd, that there had been a Plot to kill the King, and he was to have been one of the Assassins; that four Jesuits put him up on it, viz. *Ewers, Gavan, Jason, and Vavasor*; and that afterwards there was to have been an Army rais'd, and the Protestants were to have been massacred. That these Things were consulted of at my Lord *Aston's* House at *Tixall*, and at Mr. *Gerard's* House at *Boscobel* in *Staffordshire*. He depos'd farther, that the Monday after Sir *E. Godfrey* was kill'd, he saw a Letter at *Tixall* from Mr. *Harcourt* to Mr. *Ewers*, dated the Saturday before, with this Expression, (*Viz.*) *This Night Sir E. Godfrey is dispatch'd*. And that the Deponent heard the Jesuits kill'd him, because he was too much privy to their Consultations: And said, they were afraid of Mr. *Coleman* too, that he carry'd Things too high, and he was out of their Favour for two Years.

Evidence of the Plot in general.

Then Mr. *Prance* was call'd and sworn.

Prance depos'd, that he was told by my Lord *Arundel's* Butler, that one *Messenger*, Gentleman of the Horse to my Lord *Arundel*, was employ'd by my Lord *Arundel* and the Lord *Powis*, to kill the King, and was to have a good Reward for it: That the Deponent afterwards ask'd *Messenger* why he would kill the King, and he answer'd, he was off of it then. *Prance* farther depos'd, that after the King was kill'd, there was to be an Army of 50000 Men rais'd to settle the Catholick Religion, which was to be commanded by the Lord *Arundel*, *Powis*, &c. as he had heard *Fenwick*, *Ireland*, and *Grove* say when they were together: And that the Protestants were to be kill'd and ruin'd, as *Fenwick* told the Deponent, That he heard *Harcourt* say the King was to be kill'd by several, and *Fenwick* said, that Mr. *Langhorn* (the Prisoner) was to have a great Hand in it.

Hearsay Evidence admitted.

Otes was call'd and sworn.

Sir *Cr. Levins*. Pray acquaint the Court what Letters *Langhorn* writ, and what Commissions he receiv'd.

Otes. In April, 77, I went to Spain. In September following, Mr. Langhorn's Sons came thither; one was a Scholar in the English College at Madrid, the other at Valledolid; they came thither to qualify themselves for Priests Orders. In November following, my Business bringing me to England, they sent some Letters by me to their Father, which I deliver'd him at his Chambers in the Temple-Lane, and told him I thought his Sons would enter into the Society, at which he rejoyc'd, being himself a great Votary to the Society, and he said, he hoped, if they continu'd in the World (as secular Priests) they would suddenly have great Promotion in England, for Things would not long continue in the Posture they were. The latter End of November, O. S. a little before I went to St. Omers, I was with Mr. Langhorn again, and he gave me a Pacquet of Letters to carry thither, which I did; and when the Pacquet was open'd, there was one Letter from him to the Fathers, thanking them for their Care of his Sons, and he therein said, he had written to Father Le Chaise about their Concerns; but that Mr. Coleman had been so large, it was not necessary to trouble his Reverence with larger Epistles at that Time: There was another Letter to the Fathers from Mr. Langhorn, in March or April, concerning an extravagant Son he had in France, and, therein, he express'd his great Care for carrying on the Design of the Catholics; and he said, in Effect, that the Parliament began to flag in promoting the Protestant Religion, and now they had a fair Opportunity to begin and give the Blow. — In April, or the Beginning of May, several of us came over from St. Omers to the Consult, and two or three Days after this Consult, I had Orders from the Provincial to give Mr. Langhorn an Account of what Resolutions pass'd at the Consult. — And I acquainted Mr. Langhorn, that Father Cary was order'd to go Procurator to Rome; that several of the Fathers were to be admonish'd for their irregular Living; and I told him there was a Resolve sign'd, that Pickering and

Otes's Evidence
of some Letters
Mr. Langhorn's
to St. Omers.

Of his acquainting
him with what
pass'd at the Con-
sult, and his pray-
ing for the Suc-
cess of it.

and *Grove* should go on with their Attempt to assassinate the King; that *Grove* was to have 1500 l. as a Reward, and *Pickering* 30000 Masses said for him: And Mr. *Langhorn* lift up his Hands and Eyes, and pray'd God it might have good Success.—— And, my Lord, I saw in Mr. *Langhorn's* Study; in the *Temple*, a Commission for my Lord *Arundel* of *Wardour* to be Lord Chancellor of *England*; and another for my Lord *Powis* to be Lord Treasurer, one for my Lord *Stafford* to be Pay-Master in the Army, and another for the Prisoner to be a Judge in the Army, or Advocate General: And there was a Commission for my Lord *Bellasis* to be a General in the Army, and for my Lord *Petre* to be Lieutenant-General, and another Commission for *Coleman* to be Secretary of State: These were by an Authority deriv'd from the Pope, and sign'd, *Johannes Paulus de Oliva*, with the Jesuits Mark, being a Cross thro' the Letters J. H. S.

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Of the Commissions receiv'd from Rome.

L. C. J. How came you to see these Commissions?

Sir Will. Scroggs
Lord Chief Justice.

Otes. We had Notice they were come by a Letter from Father *Anderton*, and I ask'd Mr. *Langhorn* to let me see them; and I having been privy to the Consult, he shew'd them me. I think I look'd over seven or eight, but there was a great many more for inferior Officers, I believe there might be fifty, and I saw most of them in the Prisoner's Custody. And, my Lord, the same Day in the Afternoon, the Prisoner gave me some original Letters from *Le Chaise* and Father *Anderton*, who is Rector of the College at *Rome*, to carry to the Fathers; these were in Answer to some Letters the Prisoner had sent them; and therein *Le Chaise* assures him of his Constancy in assisting the Society to carry on the Cause, and says, he need not doubt but the French King would stand by them:—— But I can't say these Letters were directed to Mr. *Langhorn*.

Sir Cr. Levins. What do you know of the Money to be rais'd by the Benedictine Monks?

Hearsay Evidence
again.

Otes. Mr. *Langhorn* was Solicitor to the Society, and being spoke to by the Fathers about it, he said he would stir in it; and upon his soliciting the Benedictines, I have heard they promis'd 6000*l.* towards carrying on the Cause: And another Thing I remember, namely, that Mr. *Langhorn* was disgusted with Sir *George Wakeman*, that he was not contented with 10000*l.* for poisoning the King, and said he was a covetous Man, and a narrow-soul'd Physician, and that it being a publick Concern, and to carry on the Cause, he might have done it for nothing.

Then a Writing under the Jesuits Seal, constituting Mr. *Stapleton* Rector of St. *Omers*, was shewn Mr. *Otes*; and he said, that was the same Hand and the same Seal that was to the Commissions he mention'd.

Mr. *Langhorn*. When did you arrive at St. *Omers*?

Otes. I think the 10th of *December*, N.S.

L. C. J. All their Defence lies in Catches in a Point of Time, in which no Man can be positive.

Langhorn. How long did you stay there?

Otes. Till *April* without stirring, except that I went to *Paris*, and a Night or two to *Watton*.

Langhorn. When did you come to *England*?

Otes. About the Middle or latter End of *April*, and I staid here under twenty Days: Father *Williams*, Father *Marsh*, the Rector of *Liege*, and Sir *John Warner*, came over with me, and Sir *Tho. Preston*, and Mr. *Pool*, and, I think, Sir *Robert Brett*.

Langhorn. I desire to know how he came from *Dever*, whether in the Coach or on Horseback, to *London*?

Otes. The Question is so sudden, I can't be positive.

Langhorn. In a Tryal in the King's Court, he said he came by Coach, in Company with Mr. *Hillsley*.

Otes. No; I said I came over in the Packet with Mr. *Hillsley*, but he left us on the Road.

Langhorn. I desire to know where he lodg'd when he came to Town?

Otes.

Otes. I had a Lodging provided for me at Mr. Grove's; I can't say I lay there the first Night I came to Town, but I lay there three or four Nights while I was in Town.

Langhorn. When did he return to St. Omers?

Otes. I think it was a Week in May first.

L. C. J. They say, Yesterday you affirm'd you staid but six Days.

Otes. I do not say so, but I say under Twenty.

Langhorn. The Letters he speaks of, did he see me write them?

Otes. I did not see him write them, but I know them to be his Hand; for I saw the Letter wherein he order'd Money to be paid to his Son, which was paid accordingly; and it was the same Hand.

Langhorn. Does he know that *Le Chaise* and *Anderton* writ to me?

Otes. He had Letters subscrib'd with their Names, which he said came from them, and he deliver'd them to me to communicate to the Fathers.

Langhorn. When did he forsake the Protestant Religion and become a Papist?

Otes. It was in *February* or *March*, 1676.

Langhorn. Did he leave his Vicarage before he turn'd Papist?

Otes. It was not very long before.

Langhorn. After he turn'd Papist, I desire to know if he became a Jesuit?

L. C. J. You must not ask him a Question that may bring him into Danger.

Langhorn. I ask it, because he says, in one of his Narratives, there came over nine of us, all Jesuits: I desire he may be ask'd, if ever he convers'd with me, or saw me, after he acquainted me with the Consult.

Otes. I think twice or thrice after I came over again in *July*: He would not let me come to his House, but I used to be at his Chamber, for his Wife was a Protestant, and he would say, she was but *Ams-Ace* turn'd from a Devil, and so I should not come thither.

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Bedloe was sworn.

Bedloe objects to a Papist's taking Notes in Court.

Query, If a Court can hinder one's taking Notes.

He demanded of the Court, before he gave his Evidence, whether a known Roman Catholick might be permitted to take Notes of the Evidence in such a Cause: And the Chief Justice said he thought not: Then he inform'd the Court, that the Marchioness of *Winchester* had taken Notes all the Tryal, but the Court slighted his Information.

Then *Bedloe* depos'd, That about three Years since, he was sent by Mr. *Coleman* and Mr. *Harcourt* to Mr. *Le Chaise* and Father *Stapleton*, with Letters for carrying on the Design; that he came to Mr. *Coleman*'s House for the Letters, and Mr. *Coleman* took them unseal'd, and went with the Deponent to Mr. *Langborn*'s Chamber in the Temple, and there Mr. *Langborn* register'd them, and then Mr. *Coleman* seal'd them up and gave them to the Deponent to carry to *Le Chaise*.

Mr. *J. Pemberton*. What was the Effect of these Letters?

Bedloe. To acquaint *Le Chaise* that they wait'd only for his Answer, how far he had proceeded with the *French* King about sending the Money, for they only wanted Money, every Thing else was ready; that the *English* Catholicks were safe, having procur'd all Places and Offices to be given to Catholicks, or such as they thought wou'd be so; that all the Garrisons were already in their Hands, or ready to be put into them. And in the Letter to Father *Stapleton* 'twas said, they had so fair an Opportunity, having a King so easy to believe what was dictated to him by their Party, and the *French* King, at the same Time, so powerful, if they miss'd this Opportunity they must despair of ever introducing Popery into *England*.

L. C. J. Did the Prisoner write them in a Book, and were you by all the Time?

Bedloe. Yes, my Lord; I and *Coleman* walk'd in the Chamber, while he writ them in his Study; he register'd every Penny of Mony that was paid, and all Transactions in Relation to this Concern: And about a Year and half since, Mr.

Harcourt

Harcourt sent another Packet of Letters, by me, to Mr. *Langborn* to be register'd; one of them was from Sir *William Godolphin*, that I had brought before from *Spain*, and it was directed to my Lord *Bellasis*, and another of them was from the Rector of the *Irish* College of Jesuits in *Salamanca*, the Purport whereof was, that my Lord *Bellasis*, and the rest of the Party, should be in a Readiness, for they had provided some *Irish* Troops, in *Spain*, to be shipp'd at the *Groyn*, who shoud Land at *Milford Haven*, and join my Lord *Powis* in *Wales*; and they said they only waited a Return from *England*, to know what Readiness they were in there.

L. C. J. Did the Prisoner transcribe these Letters?

Bedloe. I suppose so, for he afterwards sent them back to Mr. *Harcourt*; but I saw him transcribe the Letters Mr. *Coleman* brought to his Chamber, in a Parchment Book three Inches thick, and he seem'd to have gotten through two Thirds of the Book then. And Mr. *Pritchard* told me the Commissions were come, and Mr. *Langborn* had them.

Sir *Cr. Levins*. Do you know any thing of a Sum to be rais'd by the Benedictine Monks?

Bedloe. In *May*, 1676, among the Letters I carry'd to *Le Chaise*, one was directed to *Scapleton*, a Benedictine Monk, to raise the Money they had promis'd to remit to *England*, but no particular Sum was mention'd.

L. C. J. Did not you see the Commissions?

Bedloe. I never saw any in Mr. *Langborn's* Hands, but Sir *Henry Titchburn* shew'd me three at *Paris*, sign'd by the General of the Order, and seal'd with the Jesuits Seal, which made me take up this Paper; [a Paper he produc'd in Court] for tho' it be a Thing of an indifferent Nature, yet it being written in the same Hand and seal'd with the same Seal the Commissions were, I thought it might be worth my while to keep it.

Mr. *Belwood*. Did Mr. *Langborn* know any Thing of the murdering the King by *Pickering* and *Grove*?

Hearsay again.

Bedloe. I was at Mr. *Harcourt's* Chamber, and he told me he was going to Mr. *Langborn's* Chamber, to take Minutes of what they had done that Morning concerning sending down those People to assassinate the King.

Mr. *J. Atkins.* That is no Evidence against the Prisoner, being but Hearsay.

L. C. J. Was there such Expressions in the Letters *Coleman* sent, that the Catholicks Arms and Hearts were ready, and exciting the *French* King to invade the Kingdom?

Bedloe. Yes, my Lord, and Mr. *Langborn* transcrib'd those Letters while we were in the Chamber.

Mr. *Langborn.* Were they long or short Letters, and how many were there?

Bedloe. There were three Letters, one to the *English* Monks at *Paris*, another to Monsieur *Le Chaise*, and a third to the Pope's Nuncio: They were the best Part of half a Sheet of Paper. Mr. *Coleman* writ a fine small Hand, and wou'd put a great deal of Business into a little Paper; the Pope's Nuncio's Letter was short.

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Langborn. Did those Letters express what the Money was to be rais'd for?

Bedloe. Tho' it was not express'd in the Letters what the Money was for, yet, in the Discourse between Mr. *Coleman* and Mr. *Langborn*, it was plain, it was to destroy the Government, and to introduce Popery.

L. C. J. Then they consulted together after the Letters were transcrib'd?

Bedloe. Yes, my Lord.

Otes depose
800000 Crowns
were rais'd at
Rome for carrying
on the popish
Plot, and Mr.
Langborn had No-
tice of its being
paid at *Paris*.

Otes. My Lord, I omitted to acquaint the Court, that the Congregation at *Rome* did contribute 800000 Crowns, to be sent into *England*; and Mr. *Langborn* did enquire concerning that Money, and had Knowledge of the Receipt of it in *France*, as Mr. *Langborn* said in *July* or *August* to Father *Kaines* and Father *Fenwick*.

Bedloe. I recollect something more too: Father *Kaines* told me, the Secretary *de propaganda fide*, Cardinal *Barberino*, had sent a chiding Letter to Mr. *Langborn*, and the rest of the Conspirators, that

that they proceeded no farther, when they had so fair an Opportunity; and he said, he had the Letter in his Hand, which he had just receiv'd at Mr. Langborn's.

Sir Cr. Levins said, They had another Witness to give a general Account of the Plot.

Then *Buss*, the D. of *Monmouth's* Cook, was call'd; and depos'd, That in *September* last being at *Windsor* with one *Handkinson*, an old Acquaintance lately come from *Italy*, he heard *Handkinson* say to one *Anthony*, who was Servant to the Queen's Confessor, That he had brought over four worthy *Irish* Gentlemen with him, who would do their Business; and desir'd *Anthony* to take a particular Care of them, which this *Anthony* promis'd he would.

Upon this Relation of *Buss*, the Court gave Mr. *Tiffen* an Order to go to *Somerset-House*, and take *Anthony* into Custody.

Langhorn. This last Witness says nothing to me.

L. C. J. North. He speaks only to the Plot in general; but Mr. *Otes* speaks to every Article in the Indictment; and *Bedloe* says, He did not only see you transcribe that treasonable Letter, but carry'd other Letters to you, which you promis'd to transcribe; and these are Overt-Acts of Treason.

Langhorn. It is their Testimony only I am concern'd in, and they confess themselves to be Parties to this suppos'd Crime; I desire to know whether they have had their Pardon.

Bedloe. I have three.

Otes. And I have two Pardons under the Broad Seal, but I don't know what is in them.

L. C. J. North. They are good Witnesses whether they have their Pardon or not.

Langhorn. They come under the same Reason of Law with an Approver: And if an Approver be pardon'd, the Appellee ought to be discharg'd by Law; and, methinks, these Men having been *participes Criminis*, and having got their Pardons, cannot be reckon'd substantial Witnesses against a Prisoner at the Bar. Besides, I desire to know,

Mr. *Langhorn* objects, That an Approver being pardon'd could not be a Witness against the Appellee. The same Reason holds as to an Associate in the Crime.

if

if they have not receiv'd any Rewards or Gratifications for their Service, or expect any?

Ores. I have disburs'd 6 or 700 l. out of my Pocket, and I don't know when I shall see it again.

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The Court overrules the Objection, and adds, That their being maintain'd by the Government is no Objection to their Testimony neither.

L. C. J. North. As for their receiving a Maintenance from the King, that is but reasonable, and can be no Objection. And an Approver, while he was in Service, was to have a Penny a Day, which, in those Days, was a better Subsistence; so that any Reward that they have, unless you can prove it to be by Contract, or by Way of Subornation, you cannot make it an Objection.

Langborn. I am inform'd by a Prisoner, [Mr. Reading] *Bedloe* has receiv'd 500 l.

Query, if standing in the Pillory disable one from being a Witness, unless it be for Perjury.

L. C. J. North. Reading is an infamous Person, he has stood in the Pillory, and can't be a Witness; but for the 500 l. we all know of it, it was for a particular Fact, the discovering the Murderers of Sir E. Godfrey.

Bedloe. I am so far from gaining by it, that I am 700 l. out of Pocket.

Langborn. Tho' it may be reasonable enough to offer a Reward by Proclamation for the Discovery of a Person charg'd with a Crime when he absconds, yet I think it hard, when a Prisoner is in Custody, Witnesses should be brought in against him by this Means.

Mr. J. Atkins. There was a Reward propos'd for the making a farther Discovery of the Plot; and shall this be objected to their Testimony when they come in?

L. C. J. Whatever you object of this Kind does fly in the Face and reflect upon the Integrity and Wisdom of the King, Lords, and Commons, for it was done by the Advice of all three. — Does your Defence lie wholly in Objections to the Incompetency of the Witnesses?

Langborn. My whole Defence must be in disabling the Witnesses, for I have been kept close Prisoner in *Newgate* ever since the 17th of *October* till this Day Sev'night, and convers'd with no Friend or Relation; and I never heard what I

was

was charg'd with, or could foresee what these Men would testify against me.

L. C. J. If you will prove any Thing, do, but don't spend our Time to no Purpose.

Otes. My Lord, here are Papists come into Court with their Swords on.

Otes tells the Court, the Papists came into Court with their Swords on.

L. C. J. and L. Mayor. They will not draw them here: You are safe enough here, Dr. Otes.

Then the Prisoner call'd his Witnesses; and first, Mr. *Hilsley* appear'd.

L. C. J. When did you come over from St. Omers? Did Mr. Otes come with you.

Hilsley. I came over the 24th of April, N. S. but Mr. Otes did not come over with me; for neither I, nor any Man in the Ship, saw him.

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Otes. He lost his Money at Calais; he lent a great deal of Money to a Gentleman that went away with it.

The Prisoner produces many Witnesses to prove, Otes was at St. Omers when he pretended to be here at the Consult.

Hilsley. That is very true, but Otes was told it by one I met upon the Road.

Mr. *Gifford* appear'd.

He depos'd, That he saw Otes at St. Omers three or four Days after *Hilsley* went away, and that Otes was talking of it; that Mr. *Burnaby* was by, who came to the College the 1st of May.

Another Witness appear'd, and depos'd, That Mr. *Burnaby* told them of Mr. *Hilsley*'s being cheated of his Money; but he could not say how, or whether *Burnaby* nam'd the Place.

L. C. J. But Mr. Otes names the Place, which he could not have known if he was not there; for this Witness says, *Burnaby* did not say how, by whom, or where it was.

Langhorn. How long was Mr. Otes at St. Omers? 3d Witness. From December till June; I saw him almost every Day in the Refectory, except one Day he was at Watton; he sat at a little Table by himself, and we could not but take Notice when he was absent.

L. C. J. You have fifteen or sixteen Witnesses will say this.

Langhorn. Otes hath affirm'd, That Sir Robert Brett came over with him in April, in his Narrative, and upon his Oath before the House of Lords.

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Mr. J.

Query, if a Prisoner may not shew, the Witness gave a contrary Evidence in another Court.

Mr. J. Pemberton. You cannot oppose him in that Oath unless he hath sworn it here, for it cannot be intended he should have a Witness to make good what he swore there.

Langhorn. I desire my Witnesses may be examin'd as to Sir John Warner's being with him.

L. C. J. I suppose they will say the same they did Yesterday, That he did not stir from his House at Watton all April and May.

4th Witness. My Lord, he liv'd there all that Time, I saw him almost every Day, except the last of April, and 1st, 2d, and 3d of May, when Sir John sent me with some Musical Instruments to St. Omers, where I then saw Mr. Otes as he was going into the Refectory to Dinner.

L. C. J. You are Sir John's Gardener, are you not? Was Sir John there all June?

4th Witness. I can't tell that, I speak to April and May.

L. C. J. Those are the two Months that fit him.

Mr. J. Pemberton. How came you not to remember June as well as those Months?

4th Witness. Because the 24th of April our Rector came to England, and Sir John took the Charge of the House in the Rector's Absence. And besides, the Question I came for not concerning the other Months, I have not recollected myself as to them, but I believe he was there then too.

Query, if the Ch. Justice does not show a little Partiality here.

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L. C. J. 'Tis true, the Evidence of this Witness, and Mr. Otes Testimony, cannot stand together; but it is a Question if this Witness does not come prepar'd; for the Reason he gives you why he does not so well remember the Months of June and July as those of April and May, is, because the Question did not fall upon those two former Months; and this shakes all he said before, and looks as if he came on purpose and prepar'd for those Months; and I'm afraid this Objection will go to the Testimony of all your St. Omers Men.

L. C. J. North. I doubt it will go a great Way to shake all their Testimony.

The

The Prisoner call'd a 5th Witness.

He depos'd, That on the 1st of *May* there was a great Feast kept at *St. Omers*, call'd *St. Fortunatus* and *Gordianus*, and then he saw *Mr. Otes* there, and all the Month of *May* afterwards; and that *Mr. Pool* was there at the same Time, whom *Mr. Otes* had sworn came over with him in *April*: And this Witness said, He could be surer of *Mr. Pool's* being there then, because he was his Musick-Master, and taught him at that Time.

Baillee, a Foreigner, was produc'd, and an Interpreter was call'd.

L. C. J. Where did this Witness see *Sir John Warner* in *April* or *May*?

Interpreter. He says, he saw him at *Watton* from the first *Sunday* in *April* to the 14th of *May*, and convers'd with him; and the 14th of *May*, he remember'd, *Sir John* went to *St. Omers*; for the Deponent says, he was then employ'd about a Building by *Sir John*.

One *Carpentier* was call'd.

He depos'd, That *Sir Thomas Preston*, (whom *Otes* swore came over with him the 24th of *April*) was at *Liege* all the Months of *March*, *April*, *May*, and *June*; that he was absent only during the Vacancies which were from the Beginning of *August* till the End of *September*; and that *Sir Thomas Preston* had not been in *England* these three Years.

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A *Dutchman* appear'd as a Witness, and an Interpreter was call'd.

Interpreter. He deposes, That *Sir John Warner* was at *Watton* all *April* and *May*, unless one Day in *May*, when he went to *St. Omers*.

John Joseph appear'd.

He depos'd, That *Sir Thomas Preston* was at *Liege* in *March*, *April*, *May*, *June*, and *July*, 1678; and that he was absent only during the Vacancies; for he constantly saw him, during those Months, once in two or three Days.

A 10th Witness appear'd.

He depos'd, That *Otes* was in the College on *Monday* the 25th of *April*, N. S. (being the Day *Otes* swore he came to *England*) for that he went into

into the Infirmary that very Day; and, that *Otes* was at *St. Omers* from *January* to the 20th of *June*, except one Night he lay out at *Watton*.

Mr. Recorder. Now he says, it was the 25th of *April*, N.S. Yesterday, he said, it was O.S.

11th Witness appear'd.

He depos'd, He saw Mr. *Pool* at *St. Omers* once in two or three Days all *April* and *May*.

12th Witness.

He depos'd, That he saw Mr. *Otes* at *St. Omers* almost every other Day, from the Time he came thither, which was the Beginning of *December*, till *June* following, when he went away; that particularly he saw him the 1st of *May* in the Garden, playing at Nine-Pins, it being a great Festival, and he remember'd what they play'd for.

13th Witness.

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He depos'd, That he saw Mr. *Otes* at *St. Omers* in *April* and *May*; that *Otes* came thither the Beginning of *December*, and went away the latter End of *June*.

L. C. J. *North*. Yesterday you said, 'twas the latter End of *July*.

14th Witness.

He depos'd, That *Otes* was at *St. Omers* all *April* and *May*, and a good Part of *June*; and that Mr. *Pool* was there in the Infirmary the 3d of *May*, which he remember'd particularly, because it was the Feast of the *Invention of the Holy Cross*, and they had an Action that Day; and some in the Infirmary would have it acted over again before them, and they did so; and he depos'd farther, That two or three Days after Mr. *Hilsley* went away, *Otes* came out of the Infirmary, and the Deponent convers'd with him; that the 2d, 3d, 4th, and 5th of *May* he saw *Otes* in Mr. *Burnaby's* Company, who came to the College the 1st of *May*; that he saw *Otes* the 26th of *May* with a Band about his Head, in order to be confirm'd; for they have a Linnen Cloth bound about their Heads at the Confirmation.

15th

15th Witness.

He depos'd, That between *December 77*, and *June 78*, Mr. *Otes* was not out one Night, except that when he lay at *Watson* in *January*; that there were not two Days he did not see him, except in *March*, when the Deponent was in the Infirmary, and on the 24th of *April*, when *Otes* was in the Infirmary; that he remember'd *Otes* was in the College when Mr. *Burnaby* came, which was about a Week after Mr. *Hilsley* went away, for they much wonder'd how *Otes* came acquainted with him so soon after his Arrival; that *Otes* was there the 3d of *May*, when Mr. *Killenbeck* and Mr. *Conquest* went away, for they were talking, that *Conquest* was loth to leave the College, because he could get out of his Bed no sooner the Day he was to go away; and he remember'd, *Otes* was there the 26th of *May*, because the Bishop din'd at St. *Omers* that Day, and Mr. *Otes* was confirm'd then.

Langhorn. What do you say as to *Pool* and *Nevil*?

15th Witness. They were there all the Time in Question; and never absent long enough to come to *England*, as he swears.

L. C. J. We must not allow that; tell us what Time they were there, that we may judge of it?

15th Witness. They were there in *March*, *April*, *May*, *June*, and *July*.

Mr. Recorder. Was not Mr. *Otes* twice in the Infirmary?

15th Witness. He was there on *St. Thomas* of *Canterbury's* Day, and he was there in *April*.

Langhorn. I hope your Lordship will take Notice, that he speaks also of the Residence of Mr. *Pool*, Sir *Robert Brett*, and Mr. *Nevil*.

L. C. J. Yes, I do.

16th Witness, being a Foreigner, an Interpreter was call'd.

Interpreter. He says, Mr. *Otes* was at St. *Omers* till about the 25th of *June*; and says, that *Nevil* and *Pool* were there all *June*; and that the Deponent, being a Waterman, carry'd *Williams* and *Marsh* away in his Boat the last Sunday in *April*.

17th

17th Witnesses.

He depos'd, That Mr. *Otes* was at St. *Omers* in April and May 78, as were also Mr. *Pool*, Mr. *Nevil*, and Mr. *Brett*; that in the Month of May, particularly, he made Mr. *Killenbeck* a Suit of Cloaths, and Mr. *Otes* came to the Deponent's Shop, and ask'd him whose they were, and some other Questions about them.

Mrs. *Grove* appear'd.

Mrs. *Grove*, where *Otes* says he lodg'd when he came over to the Consult, depos'd, she never saw his Face till now.

Langhorn. Mr. *Otes* says, when he came over to the Consult, he lay three or four Nights at Mrs. *Grove's*; I desire to know whether he did so or no?

Mrs. *Grove*. My House was full of Lodgers in April was Twelve-Month; and if Mr. *Otes* was there, I must needs know him, but I never saw him before.

L. C. J. Might not a Man be with any of your Lodgers three or four Nights, and you not know him?

Otes. I had a Bed to my self when I lay there, and it was in a Chamber taken out of another Room, where two Men since lay, who were taken there and committed to Prison.

Mrs. *Grove*. There was one Mr. *Crupper* and a young Man lay with him in that Room then.

L. C. J. Why might not that be Mr. *Otes*?

Sir *Cr. Levins*. You were in a Disguise at that Time, and went by another Name, so that the Woman might not know you.

Otes. Yes, I did so.

L. C. J. You cannot make any great Matter of this; she might not know him.

Langhorn. Mrs. *Grove* says, She knew all her Lodgers that lay there then.

Mrs. *Grove*. Yes, I will name them; one Pair of Stairs there lay Mr. *Strange*, and Mr. *Fitzbert*, and above, there lay my Sister, all the Months of April and May.

L. C. J. What say you to the Months of March, and June, and July?

Mrs. *Grove*. I was not to be examin'd but to the two Months I speak of.

Mrs.

Mrs. Grove's Maid appear'd.

She depos'd, That Mr. *Strange* and Mrs. *Fitzbert* lay in her Mistress's House from *March* till *August*; and that her Mistress's Brother, Mr. *Tork*, and his Wife, lay there then too.

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Langhorn. My Lord, I desire to prove a Copy of the Record in the Lords House.

L. C. J. That is not to be given in Evidence here.

Langhorn. It is an Extract out of the Journal of the House of Lords, about those Persons that *Otes* says came over with him from *St. Omers*.

L. C. J. North. If you can show a Record to contradict what he hath sworn here, do it; but do you think he can come prepar'd to justify all he hath done in another Place?

Langhorn. He hath said over and over, That *Sir John Warner*, *Sir Thomas Preston*, and Mr. *Pool*, came over with him.

L. C. J. What should you urge that Book for? Can you make any other Proof?

Langhorn. I would have the Persons call'd who took *Ireland's* Tryal.

L. C. J. If you have any more Witnesses, call them.

Langhorn. Won't your Lordship allow me to prove by Witnesses what he affirm'd in Relation to me at another Tryal?

He is not admitted to prove what the Witnesses swore against him at another Tryal.

L. C. J. By no means, you must not meddle with that.

Langhorn. Pray, my Lord, why not?

L. C. J. North. That is no Evidence against you, nor can be any Evidence for you.

Langhorn. Then you take away my Defence.

Mr. *J. Atkins*. That is no Evidence in a Civil Cause, and therefore must not be Evidence here.

My Lord *Castlemain* came in.

L. C. J. What do you come for, Sir? What is your Name?

E. Castlemain. My Name is *Castlemain*; I came in to give your Lordship an Account, that some of the Witnesses who were summon'd for the Prisoners, are so beaten and abus'd without, that they

The Witnesses who appear for the Prisoner, abus'd by the Mob.

dare not come to give their Evidence, for fear of being kill'd.

Court. We will severely punish any one who is guilty of it; they shall have free Ingress and Regress, and all the fair Play imaginable.

E. Castlemain. One of them is so beaten, that it may cost him his Life.

The Prisoner demanded of *Mr. Otes*, How many met at the *White-Horse* Tavern the 24th of April at the Consult? To which *Otes* answer'd, There might be Eighteen or Twenty there at a Time, in several Rooms.

The Woman that kept the *White-Horse* was call'd by the Prisoner.

She depos'd, That she never saw *Otes* at her House; and that never a Room in her House would hold a Dozen People; and she never had so large a Company as *Mr. Otes* mention'd, in all the seven Years she kept it, unless when a Jury of the Parish met, and they were forc'd to be divided into several Rooms.

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Then some of the Standers by were sworn for the King, and depos'd, That they had seen Sixteen or Twenty in a Room there; which the Court said, they thought made the Woman's Evidence of no Weight.

Langkorn. My Lord, *Otes* says in his Depositions before the Lords, That there met 50 there; and I thought it very considerable, if they had never a Room that would hold such a Number as Fifty.

L.C.J. They might meet at several Times in the Day, some at one Time, and some at another.

Langborn. He says in *Coleman's* Tryal, there met fifty, and afterwards adjourn'd into lesser Colloquies; and this must be all in the Morning.

Otes. I say, they met there the 24th, but the Consult was not dissolv'd till the 26th Day at Night.

L.C.J. Have you any more Witnesses to call?

Langkorn. I desire I may call them after the King's Council have done.

Mr. J.

Mr. J. Pemberton. You must call no new Witnesses then.

Langhorn. I would ask Mr. Otes if Ireland was here in August?

L. C. J. That was proper enough in the Tryal of the others Yesterday, because he depos'd, That Fenwick and Ireland were here in August together; and this did concern Fenwick, but this has no relation to you, and you cannot think it reasonable to examine him to it.

A Witness may not be examin'd to any Thing that does not relate to the Matter in Issue.

Langhorn. Mr. Otes has affirm'd, he was 6 or 700 l. out of Purse in this Matter; I would examine a couple of Witnesses as to the Probability of this; for he was so very poor and indigent before this Matter happen'd, that it was impossible, without a Purse being made for him, to lay out 6 or 700 l.

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L. C. J. If you prove him in an indigent Condition, what is that to the Purpose?

Langhorn. If he were so indigent, is it probable any Man would trust him with such a Sum, unless it were to give this Evidence?

L. C. J. If you have any other Witnesses, call them.

Langhorn. May I not use this Copy of the Record of the House of Lords?

L. C. J. To what Purpose would you have it read?

Langhorn. Bedloe swears there, He had no other Person to accuse either in the House or out of the House, than what he then charg'd, and I was not one of the Persons mention'd.

L. C. J. Can that be used as an Evidence here? If you had Witnesses to prove he made such an Oath, you say something.

The Ch. Justice admits, a Witness may be confront-ed by another, as to what he said at another Tryal relating to the Prisoners.

Mr. J. Pemberton. You pick out collateral Matters, and spend our Time to no Purpose; it may be he did not remember it, and will you conclude him, that he shall never remember it?

L. C. J. North. Besides, upon Affidavit or Answer in Chancery, it is never allow'd, unless you have the Party to prove he took the Oath.

Langhorn. I would know of Mr. Otes, if I distributed any of the Commissions he mentions?

The TRIAL of

Otes. In July or August he said he had distributed them, but he did not say to whom, except one that he sent by his Son to the eldest Son of the Lord *Arundel* of *Wardour*, to be Commissary General.

Langborn. He hath charg'd me, that I sent my Lord *Arundel's* Commission by my Son, and that he saw a Letter in my Chamber of the Receipt of it.

Otes acknowledges, he conceals part of his Evidence, tho' sworn to speak the whole Truth.

Otes. Some of the Evidence that affects the Lords I do not charge upon Mr. *Langborn*, because I would not discover my Evidence against the Lords; and hope the Court will excuse me, because I reserve it for another Tryal.

Langborn. In the Narrative of *Coleman's* Tryal, he says, He came to me the Day after the Consult, and communicated it to me, and never saw me afterwards.

Mr. *Blaney* was call'd, and ask'd, Whether *Otes* said any Thing concerning Mr. *Langborn*, at *Coleman's* Tryal?

Blaney. I remember *Otes* did say something about Mr. *Langborn*, but I have not my Book here, and can't tell what it was.

Langborn. Here is the Narrative.

Blaney. That was not printed by my Copy.

L. C. J. You must not bring that for Proof, which is but an Historical Narrative.

Langborn. If I can have no Light, how can I tell what they will charge me with?

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L. C. J. You know, where a Man is indicted of Treason or Felony, he is clapp'd up; and cannot by Law have a Copy of his Indictment.

Langborn. They know something what they are accus'd of, and are brought before a Justice of Peace.

Elizabeth Silyard appear'd.

Langborn. She comes to prove, That *Bedloe* depos'd at *Reading's* Tryal, that he did not say all he could against *Whitebread* and *Fennick* at their first Tryal; which shews him to be guilty of Perjury, for he was sworn to speak the Truth, the whole Truth, and nothing but the Truth.

L. C. J.

L. C. J. Is this material in your Case what he said in *Whitebread* and *Fenwick's*? Besides, they were told, he was in Treaty with *Reading* about lessening his Evidence against the Lords, who were to judge of the Measure they should have from him by his Kindness to *Whitebread* and *Fenwick*, and therefore he conceal'd something.

Baldie takes the Liberty of concealing Part of his Evidence too.

Langhorn. This is so far material, to discredit his Testimony.

But *Sillyard*, the Witness, desiring Protection from the Rabble, which the Court would not give, otherwise than by saying, They would punish those that meddled with her, Mr. *Langhorn* waiv'd the Matter.

L. C. J. If you have no more, the King's Council will go on.

Then the King's Council call'd Witnesses to prove Mr. *Otes* in *London* about the Time of the Consult; and, first, Mr. *Walker* the Clergyman was sworn.

Mr. *Walker* depos'd, That in *March* or *April* 78, (he believ'd it was about the Middle of *April*) he met Mr. *Otes* in a Disguise between *St. Martin's-Lane* and *Leicester-House*, about Ten in the Morning, but could not recollect who it was till the next Morning, and then he went to a certain Gentlewoman's to ask after him; and she said, *Otes* was an undone Man, he was gone over to the Church of *Rome*, and he was lurking about Town, and dar'd not appear only of Evenings.

The King's Council call Witnesses to prove *Otes* in *London* at the Consult.

Mr. *J. Dolben*. Did you mention this first to Mr. *Otes*; or did Mr. *Otes* come and put you in Mind of it?

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Mr. *Walker*. I discours'd with some Persons about it soon after the Plot was discover'd, and so, I suppose, it came by Accident to him.

Mrs. *Otes* was sworn.

She depos'd, That in *April* was Twelve-Month, Mr. *Walker* came to her, and ask'd her after Mr. *Otes*; and she told him, She had not seen him since he went beyond Sea; but his Friends told her, he was about the Town in a Disguise; and Mr. *Walker* answer'd, He saw him the Day before much alter'd from what he was, in light-colour'd

Cloaths; and she remember'd it to be in *April*, because Mr. *Otes*'s Father was at her House about that Time, and she told him what Mr. *Walker* said.

Butler, Sir *Richard Barker*'s Coachman, was sworn.

He depos'd, That in *May* was Twelve-Month, *Otes* came to his Master's House in a Disguise, and enquir'd for Dr. *Tongue*; that the Deponent was then in the Gate-House; and *Otes* went into the House and soon return'd, and the Deponent thought he was affronted, because somebody laugh'd at his Habit, for he was more like a Shepherd than a Minister, having his Hair cut, a grey Coat, and plain Shoes, and a flapping Hat; and that he went back thro' the Gate, and took no Notice of the Deponent, tho' he spoke to him, and welcom'd him to *England*; and that he acquainted his Master of *Otes*'s being there in such a Habit, when he came Home about a Week after.

Cicely Mayo was sworn.

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She depos'd, That about a Fortnight before *Whitsontide* was Twelve-Month, Mr. *Otes* came to Sir *Richard Barker*'s; that she had never seen him before, but a young Man who liv'd at Sir *Richard*'s pointed at him, and said, Surely he was turn'd Quaker or Jesuit by his Habit; and she reply'd, He was no Quaker, for he had a Peruke on; and she depos'd, That she was sure it was the same Man that stood by her in Court.

Philip Page was sworn.

He depos'd, That he had known Mr. *Otes* these five Years; and that he saw him the Beginning of *May* was Twelve-Month at Sir *Richard Barker*'s.

Sir *Richard Barker* was sworn.

Sir *Richard* depos'd, That he had known Mr. *Otes* many Years, but he was out of Town, and did not see him at the Time his Servants mention'd; tho' when he came to Town, which was the latter End of *Whitsun*-Week, his Servants told him, *Otes* had been there in a Disguise, and enquir'd for him and Dr. *Tongue*, but left no Message.

Mr. *Clay*, the Priest, was sworn.

He depos'd, That he met Mr. *Otes* at *Arundel*-House, at Mr. *Charles Howard*'s, twice, once in *April*,

pril, and another Time in the Beginning of *May* was Twelve-Month; that he convers'd with him; and Mr. *Charles Howard* told the Deponent, *Otes* had some Thoughts of being a Jesuit, but he had diverted him from it.

Langhorn. Did Mr. *Otes* put any Questions to Mr. *Howard's* Son about learning his Book.

Clay. Not that I heard; I do not remember that Mr. *Howard's* Son was there.

Mr. *Smith* was sworn.

He depos'd, That he knew *Otes* very well; that he was formerly a Scholar in the School where the Deponent was Usher; and that the first *Monday* in *May* was Twelve-Month *Otes* din'd with the Deponent at his House at *Islington*, and staid with him three or four Hours; and that he talk'd of his Travels in *Spain*; and that *Otes* had then a Cinnamon-colour'd Coat on trimm'd with green Ribands; and that the Deponent's Wife din'd with them at the same Time.

L. C. J. Why did you not bring her to testify this?

Otes. He cannot find his Wife.

Langhorn. Pray call Mr. *Charles Howard* and his Wife.

L. C. J. I believe he don't think it safe to come here; we know upon what Account.

Mr. *Charles Howard* appear'd.

Langhorn. It is affirm'd by Mr. *Clay*, that *Otes* was at your House in *April* and *May* was Twelve-Month.

The Prisoner calls other Witnesses to contradict them.

Mr. *Howard*. He was there about two Years ago, and after *July* last Year he was there; but I don't remember he was there in *May*.

Langhorn. When did your Son die?

Mr. *Howard*. The 5th of *May* 1677; Mr. *Otes* was at my Lodging in *April* 77, and then my Child was alive and din'd with him and Mr. *Clay*; but Mr. *Otes* has not been there with Mr. *Clay* since.

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Clay. I did not know Mr. *Otes* till the latter End of *April* last Year.

L. C. J. Do you remember whether Mr. *Howard's* Son was alive.

Clay. He had a Son alive at that Time.

Otes. He had one Son, indeed, dy'd a Year before Mr. *Clay* and I met there.

Mr. Howard. But I speak of my eldest Son, who dy'd two Years ago.

L. C. J. It's plain here is a Mistake, he speaks of a Son that was then and is now alive, and you of your eldest Son. — Well, Mr. *Langhorn*, will you say any Thing?

Mr. *Langhorn's*
Observations on
the Evidence.

Then Mr. *Langhorn* made some Observations on the Evidence: He insisted, That if he had prov'd *Otes* to have falsify'd in any Part of his Testimony, he ought not to be believ'd in the rest; that he thought he had done this to Satisfaction in the Instances of Sir *Thomas Preston's*, Sir *John Warner's*, and Mr. *Peol's* being on the other Side the Water when *Otes* swore they were here; as also in proving *Otes* to be at St. *Omers* when he had sworn he was on this Side; and, for his own Part, he solemnly protested, he had never seen *Otes* since November 1677, when he brought him Letters out of *Spain* from his Sons: That he had had but one Week to provide for his Defence, and was forc'd to take such Information as his Friends could pick up, to answer what he found in *Otes's* Narrative, supposing he would have said the same here; that the Lads who came from St. *Omers*, could not be suppos'd to come over with any Design, or to be brih'd by a Reward to say what they did; for he never saw the Face of any of them till now.

L. C. J. North. They are all Papists, and speak in a Common Cause.

Mr. *Langhorn* said, If they were not to be believ'd because they were Papists and Friends, neither were the others to be believ'd because they were Enemies. — That as to *Bedloe's* Evidence, it was not probable, in his Way of Practice, he should become a Clerk to register Letters, and keep the Accompts of a Religious Order; and still more improbable, that he should admit *Bedloe* to be privy to those Accompts, being one that he could not tell whether he had ever seen him before, and if he could have

guess'd

guess'd what he would have charg'd him with, he might have been better prepar'd for his Defence; that he made Use of such Witnesses as his Friends thought might be useful to him, and that he never saw any of them till they came into Court, while the other Side had had Time to get theirs together; that he hop'd he should lie under no Disadvantage on Account of his Religion, for that would look as if they condemn'd him merely for that; and he disclaim'd all Principles of Disloyalty, and said, He believ'd it was Damnation to any one that went about to kill the King, or deprive him of his Government; and concluded, recommending his Cause to his Lordship and the Jury.

Then the Lord Chief Justice directed the Jury: He said, Altho' Mr. *Langhorn* would have it taken for granted, that his Witnesses spoke impartially, because they were Strangers to him, yet he observ'd, they were no Strangers to the Cause they came about; that they came over to defend all the Roman Catholics they were about to hang for the Plot, and that they were sent over for that Purpose, and their speaking to no other Months but *April* and *May* would encline Men to believe it. And besides he said, The Lawfulness of deposing and killing of Kings of a different Religion, was a Doctrine they avow'd in Print; and that they taught and practis'd all Sorts of Lying and Equivocation to be lawful to propagate their Faith; and it was not unlikely that these young Boys, bred up in their Colleges, had these Principles instill'd into them; that their Dispensations, Pardons, and Indulgencies for Breach of Vows, Oaths, and Sacraments, were still worse, and render'd them unfit for human Society, or to have any Faith or Credit given to their Testimony, altho' it might be fair to hear what they said. And that there was not only this in it, but Mr. *Otes* had justify'd his being here by seven or eight Witnesses, who expressly contradicted the others Testimony: And tho' he confess'd, there were some Witnesses who spoke to Sir *Thomas Preston* and Sir *John Warner's* being on

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The Ch. Justice's
Directions to the
Jury.

That Papists were
not to be believ'd
in their Common
Cause.

Charges them
with most pernicious
Principles,
and invighs a-
gainst them.

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He frights the
Jury with dismal
Apprehensions
of the Plot.

Speaks of a Letter
that was
found, which, he
said, was an un-
deniable Evidence
of the Plot.

The Prisoner
shows, that was
no Evidence at
all of it.

on the other Side, who were not contradicted by any Witnesses, yet, if the rest were not to be believ'd as to *Otes's* being there, neither were these as to the others: And he added, that as there stood a Gentleman at the Bar for his Life on the one Hand, so, if Mr. *Otes* said true, all their Lives, Liberties, King, and Religion, were at Stake on the other; that they knew the cruel Principles of the Papists by Experience, and could not be blam'd for taking Care of themselves. That the Plot was prov'd as clear as the Day by *Otes*, and his Testimony was confirm'd by that which could never be answer'd, *viz.* The Letter found among *Harcourt's* Papers, who was one of the Conspirators, giving an Account, that the Consult was to be on the 24th of *April*, as Mr. *Otes* had before depos'd.

This Letter not having been given in Evidence at this Tryal, my L. C. J. *North* desir'd it might be read now, and accordingly it was read, being the same that was produc'd at the Tryal of the five Jesuits.

Then the Lord Chief Justice proceeded in his Directions to the Jury, and told them, That this Letter was produc'd as a Proof of the Plot in general, and was not to be apply'd to Mr. *Langhorn* in particular.

Langhorn. *Otes* might easily know of this Congregation before the Letter was taken, being at *St. Omers*, where the like Letters of Summons might come over, to fetch some over from thence.

L. C. J. 'Tis true, he might know of the Consult; but pray, can you tell me the Meaning of those Words in the Letter, *That they should not come too soon to London, nor appear too much about Town, for fear of discovering the Design, which they knew requir'd Secrecy in its Nature.*

Langhorn. This *Design* was the holding of a Congregation; and it was like the Meeting of a Dean and Chapter in a College; and he bids them not come before the Time, they being certainly in great Danger to be taken, for the Parliament was then sitting.

L. C. J.

L.C.J. But you know there was great Indulgence used towards the Papists at that Time; and was this extraordinary Caution used only for Mr. *Whitebread* and his Fellows to make an Officer?

Langhorn. Surely, their holding a Congregation here requir'd Secrecy.

Then the Chief Justice went on, and told the Jury, That indeed this was not any Evidence against Mr. *Langhorn* in particular, but of the Plot in general; but there was one Thing which affected the Prisoner which he had forgot to mention, *viz.* His Expressions when *Otes* and he were talking of Sir *George Wakeman's* insisting on 15000*l.* for poysoning the King, *That it was a base covetous Thing in Sir George, and it being a publick Cause, it would have been no Matter if he had done it for nothing*; and so he left it to the Jury.

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The Chief Justice said, The Term beginning the next Day, their Commission determin'd that Night, and therefore Sir *George Wakeman*, and the other Prisoners, would not be try'd till the next Sessions. Then the Judges went off the Bench, leaving the Recorder, &c. to take the Verdict; and the Jury withdrew.

Query, Sir George Jeffries Recorder

After a short Recess, the Jury return'd, and brought the Prisoner in *Guilty*. Mr. Recorder said, It was a Verdict according to the Justice of the Evidence.

The Prisoner convicted, and the Recorder commends the Verdict.

Then Mr. *Whitebread* and the other Jesuits that were try'd the Day before were set to the Bar, and it was demanded of them and Mr. *Langhorn* respectively, What they could say why Judgment of Death should not pass upon them according to Law? And none of them offering any Thing in Arrest of Judgment, Mr. Recorder made a Speech upon the Occasion, shewing the greatness of the Prisoners Crimes in particular, and the bloody Principles on which their Religion was founded in general. He said, he was very much concern'd for Mr. *Langhorn*, who was arriv'd to great Eminence in his Profession, but that he too had not only trespass'd against all the Rules of Christianity, but against the Rules of his Profession, and could not be ignorant what an Offence it was

The five Jesuits are brought to the Bar again, and Mr. Recorder makes a Speech.

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to

to attempt any Injury against the Person of the King, or to endeavour to introduce a foreign Power. He said their Crimes had been fully prov'd, and that no Person there cou'd be in any doubt of their Guilt: And that there was not the least Room to doubt of the Credibility of the Witnesses, who had been examin'd against them: And that they had been fully heard, and stood fairly convicted of the Crimes they had been indicted for. Then he offer'd them the Assistance of any Protestant Divines, inveigh'd again against their Principles, bid them consider the Tribunal whither they were going, and concluded with some pious Exhortations. And afterwards pronounc'd the Sentence as usual in Cases of High Treason.

He pronounces
Sentence on Mr.
Langburn and the
five Jesuits.

Then the Prisoners desir'd their Friends might come to them in Prison, which was granted.

And the Court adjourn'd for *London to Guild-Hall*, the 14th of *July*: And for *London and Middlesex* to the *Old Baily*, the 16th of *July* following.

The TRIAL of Sir GEORGE WAKEMAN, Bart. WILLIAM MARSHAL, WILLIAM RUMLEY, and JAMES CORKER, Benedictine Monks, for High Treason, the 18th of July, 31 Car. 2. 1679.

The Indictment
against the three
first for High
Treason, in com-
passing the King's
Death.

THE Indictment against Sir *George Wakeman*, *Marshall*, and *Rumley*, sets forth, That the said three Prisoners, the 30th of *August*, in the 30th Year of the King, at the Parish of *St. Giles's* in the Fields, in the County of *Middlesex*, did traitorously compass, imagine, and intend Sedition and Rebellion within this Kingdom, to move and procure to depose the King and put Him to Death, and to alter and subvert the Government and Religion establish'd; and to levy War against the King; and that, in Order to accomplish their aforesaid Treasons, they, with other false Trai-

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tors, did on the aforesaid 30th of *August* traitorously assemble, and consult, and agree, to put the King to Death, and alter the Religion establish'd to the Rômiss Superstition, &c. and that the said Sir George Wakeman, in Order to induce the said Marshal and Rumley to perform their said traitorous Agreements, did then and there promise to aid and assist them in subverting and altering the Religion and Government establish'd, and did also traitorously undertake to murder the King: And that on the same 30th of *August* the said Sir George Wakeman receiv'd and had of a Person unknown, pretending to be Provincial of the Jesuits, and to have Authority to grant Commissions, from the See of Rome, a Commission to institute and authorize him to be Physician-General of the Army, intended to be rais'd against the King. That he read the said Commission, consented to it, and kept it in his Possession, intending to execute the said Employment: And that the said William Marshal and William Rumley, and other false Traitors unknown, did on the said 30th of *August* agree to pay the Sum of 6000 l. towards the affecting and consummating the aforesaid traitorous Agreements: And that all this was contrary to the Duty of their Allegiance, the King's Power, &c.

To which Indictment the said Sir George Wakeman, Marshal, and Rumley, pleaded not guilty.

The Indictment against James Corker set forth, That the said James Corker, together with the five Jesuits, White, Fenwick, Harscours, Gavan, Turner, and other false Traitors, did traitorously compass and intend the Death of the King, the Subversion of the Government, and Alteration of Religion, &c. And that on the 24th of *April*, in the 30th Year of the King, they did, at the Parish of St. Giles's in the County of *Middlesex*, assemble, consult, and agree, to put their said traitorous Designs in Execution: And particularly did agree, that Thomas Pickering and John Grove should kill the King, and that the said James Corker, together with the said other Traitors, should therefore say a certain Number of Masses

for

1. Overt Act, a Consult.

2. Sir Geo. undertakes to murder the King.

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3. Receives a Commission from Rome.

4. Marshal and Rumley &c. agree to pay 6000 l. towards carrying on the said Treasons.

The Indictment against Corker for High Treason, in compassing the Death of the King.

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1. Overt Act, consulting and agreeing that Pickering and Grove should kill the King &c.

2. Taking the Sacrament to conceal the Conspiracy.

3. Inciting others to kill the King.

They are all try'd by the same Jury.

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for the Soul of the said *Thomas Pickering*, and shou'd pay to the said *John Grove* a certain Sum of Money agreed on for the said Service: And that the said *James Corker*, and the said other Traitors, did each to other engage themselves, and promise, and swear upon the Sacrament to conceal the said Treasons: And also that the said *James Corker*, together with the said other false Traitors, did on the Day and Place aforesaid, perswade, abett, and counsel four other of the King's Subjects, to the Jurors unknown, to murder the King; all which was against the Duty of his Allegiance, the King's Peace, &c.

To which Indictment the said *James Corker* pleaded not guilty; and the Jurors were call'd, to whom the Prisoners making no Challenges, a Jury was sworn, and *Edward Ward*, Esq; of the Council for the King, open'd both the Indictments.

Sir *Robert Sawyer* open'd the Nature and Course of the Evidence, and has these Expressions: That the Prisoners stood indicted as principal Actors in the late *Most Catholick and Bloody Plot*. That the Church and State seem'd to them too little a Sacrifice to be offer'd up to the universal Supremacy of *Rome*, but the King was also determin'd to be cut off, and several Methods had been resolv'd upon; some had contriv'd to shoot him, and these had been brought to condign Punishment; others were to stab him, and these had been brought to Justice too; and a third Sort, who were now to be try'd, were for taking him off by Poison; and this Gentleman, Sir *George Wakeman*, whose Experience and Dependence on the Court gave him great Opportunities, was pitch'd on as the properest Instrument to effect it: And that tho' his Perswasion might be some Inducement to him to commit it, he must be hir'd with a Reward of 15000*l.* to undertake the great Employment, of which he receiv'd Part in Hand.

That the other Criminals were privy to the great Consult for murdering the King, and tho' the Jesuits were the great Engineers, yet all the other

other Orders were to contribute, and particularly the Benedictine Monks were to furnish 6000*l*.

That they shou'd prove this Design of poisoning from several Discourses *Ireland* (who had suffer'd) had about it in *August*, at *London*, altho' *Ireland* had, at his Death, deny'd his being in *London* in *August* with the greatest Asseverations. And from hence, he said, they might collect what Credit was to be given to the Words of such dying Men: And that those who liv'd in the Sin of committing such horrid Crimes wou'd not stick to propagate and protect that Church they were Members off, by denying the plainest Truths at their Deaths.

N. B. When *Ores* was convicted of Perjury, it appear'd, *Ireland* was not at *London* at that Time in *August*, that *Ores* depos'd he was, and his dying Speech prov'd true.

Then the King's Council call'd their Witnesses, and first Mr. *Dugdale*.

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Mr. *Ward*. Pray speak what you know of the Plot in general.

Dugdale depos'd, That for seven Years past he had known something of the Plot, and that about two Years since, the Design of killing the King and the Duke of *Monmouth*, and introducing of their Religion, was more particularly communicated to him by *Ewers*, *Gavan*, *Peters*, and *Lewson*, their Priests: That all the Letters which came from *London* into *Staffordshire*, from Mr. *Harcourt*, or others, concerning the Plot, were directed to him; that he had sometimes eight or nine in a Packet; that he open'd several of them, and some that he cou'd not seal up again he kept; that he was to deliver them to Mr. *Ewers*, (who never knew that he open'd them) and he was to distribute them to the several People in the Country for whom they were design'd; that the Purport of them was for the raising of Money, and engaging the Gentlemen of the Country in the Plot, and particularly Mr. *Gerrard* of *Hilderstone*, Mr. *Howard* of *Horecross*, and Sir *James Simons*, were to be Officers in the Army, when the King was kill'd — That there was Money ready in *July* last for raising the Army, the Deponent having seen Acquittances that came from *St. Omer's* that the Money was paid;

The King's Witnesses call'd to prove the Plot in general.

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paid, and that there was a Caution given, in a Letter directed to him, not to permit any Rumour of taking Arms 'till the King was dispatch'd: The Deponent cou'd not remember who writ that Letter, but said it came from Mr. *Harcourt* in *Grove's Packet*, and he suppos'd it came from beyond Sea to *London*, but cou'd not tell from where it was dated; that of the Letters set down, some came from *St. Omers*, some from *Paris*, and others from *Rome*: That there was a constant Correspondence between *Ewers*, *Gavan*, and *Vavasor* in *Staffordshire*, and *Ireland*, *Harcourt*, *Fenwick*, and *Grove* in *London*; and that these last usually wrote from *London* three Times a Week about the Plot. That in a Letter from Mr. *Whitebread* to Mr. *Ewer* it was writ plainly in these or the like Words, *That he should choose none but such as were stout and hardy to kill the King*. That this Letter came by the common Post, directed to the Deponent, with only the two first Letters of the Writers Name subscrib'd, and they contriv'd it thus, that if any of their Letters were intercepted, the Deponent only wou'd have been in Danger, and that he had been at least ten Times sworn to Secresy upon the Sacrament by them.

That, besides what he discover'd by these Letters, he had talk'd with several of them about the Plot, and particularly *Gavan*, *Ewers*, and *Leeson*; and my Lord *Stafford* perswaded him in *June* or *July* last to be an Actor in the King's Murder, which they said might easily be effected by shooting or stabbing; and that he was to have come to *London* in *October* following, and been under the Direction of Mr. *Ireland*, but he never came, the Plot being discover'd first; That my Lord *Stafford* said he shou'd have 500 *l.* for a Reward at present, and a better Reward when it was effected.

That there was a Letter came directed to Mr. *Ewers* the *Monday* after Sir *E. Godfrey* was kill'd, dated the *Saturday* before, which said, *This very Night Sir E. Godfrey is dispatch'd*. And that Mr. *Ewers* shew'd it him as an Encouragement; but the

Sir E. Godfrey's
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the Deponent told him he would be hang'd if it did not overthrow the Plot; and *Ewers* reply'd, he was a Man that us'd to punish debauch'd Persons, and it wou'd be laid upon them. And that the Deponent told the Parson of the Town, and a Relation of my Lord *Aston's*, on the *Tuesday*, of a Justice of Peace in *Westminster* being kill'd.

L. C. J. Why did they look on Sir *E. Godfrey* Sir Will. Scroggs? as such an Enemy to them?

Dugdale. They had intrusted him before, but he began to be strict with Dr. *Otes*, searching into all the Concern, as Mr. *Ewers* told me, and so they thought good to take him off.

Sir *Robert Sawyer*. Did you hear any Thing of a Massacre intended?

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Dugdale. All Protestants were intended to be cut off.

Mr. *J. Atkins*. What induc'd them to put such Confidence in you? Had you so much Zeal for their Religion?

Dugdale. Yes, insomuch that I was taken for a Priest in the Country, and I gave them 400*l.* towards this Design, and to pray for my Soul; and I promis'd them another 100*l.* when they complain'd they shou'd want Money: And Mr. *Gavan* promis'd me I shou'd be canoniz'd for a Saint.

Coker. He says a Letter came from *London*, thro' Mr. *Harcourt's* Hands, concerning killing the King: I would know from whom that Letter came?

Dugdale. One came from *Paris* to St. *Omers*, and so from St. *Omers* to *London*, and from thence, by a special Messenger, to *Tixhall* in *Staffordshire*; and Mr. *Ewers* and my Lord *Aston* read it in the Parlour in my Sight: There was *J. W.* writ to it, and I suppose it was from Sir *John Warner*.

L. C. J. Where was it dated? Whence did it come?

Dugdale. There was one which was first began at *Paris*, where Advice was first to be had, and Assistance was promis'd, how it should be carry'd on; and they thought it best, after they

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had kill'd the King, for the Papists to lay it on the Presbyterians, and then the Church of England wou'd join with the Papists to cut them off. And the Letters from London said they thought it good Advice, and several Lords set their Hands to it, particularly my Lord *Stafford*, Lord *Bellasis*, and Lord *Arundel*; and in that very Letter there was an Army mention'd that were to be ready to cut off those that shou'd escape having their Throats cut.

L. C. J. To what Purpose did the Lords set their Hands?

Dugdale. That they approv'd it as good Advice.

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Corker. Was the Letter dated from St. *Omers*?

Dugdale. There were three Letters came in that Packet, one from St. *Omers*, another from *Paris*, and another from *London*, in one Cover.

L. C. J. He supposes there was a Letter writ first at *Paris*, and then sent to St. *Omers*; and that there was a Letter writ by Sir *John Warner*, and sent to *London*, and perus'd in *England* by the Lords; and all sent in one Cover into *Staffordshire*.

Corker. Your Lordship makes Sense of it, but he makes nothing but Contradictions: Pray when was he to have kill'd the King?

Dugdale. I was to have come up in *October* and done it.

Corker. *Otes* tells us of three Ways of killing the King, but this is a Fourth, never thought on before: And what shou'd there be a Design of killing the King in *October* for, when it was to have been done in *July* or *August* before?

L. C. J. Dr. *Otes* told you as much as he knew, but he did not pretend to give an Account of all Plots; and this Design in *October* might be design'd to be put in Execution only in Case the other fail'd.

Marshal. Among other Things that render this Testimony suspected, there is one which is taken from the common Practice of all Men in like Cases, who, where there is Danger, and Matters are of Moment, use to be very careful and

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circumspect, and make Choice of as few Instruments as possible. But here is one Person after another employ'd, Letter after Letter, a hundred Men, nay, almost the whole Nation acquainted with it, where a few might serve the Turn.

L. C. J. *North*. You are not to make your Objections now, you must reserve that to the last, when the King's Evidence is done, but you may ask the Witnesses Questions.

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Then the Prisoners desir'd Pen, Ink, and Paper, and it was given them.

L. C. J. Had the Letters within the Cover no particular Directions?

Dugdale. Every Letter was directed to me, and I deliver'd them to Mr. *Ewers* to distribute; they were all mark'd with a black Cross, and Mr. *Ewers* carry'd them about to the several Persons they were design'd for; he knew who they were for by conversing with them.

Rumley. How many Letters came from beyond Sea, and from what Persons?

Dugdale. I believe there came 100 in two Years Time, and there were very often some from Sir *John Warner*.

L. C. J. Did you ever see any Commissions for raising Forces?

Dugdale. No, I did not.

Corker. He says he gave 400*l*. for promoting this Design, and says, with the same Breath, he was to receive 500*l*. this is to do and undo.

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Dugdale. It was my Lord *Stafford* that promis'd me the Money, and I enquir'd of Mr. *Ewers* what it meant, having given my Money before; but I suppose my Lord *Stafford* knew nothing of that.

Mr. *Prance* appear'd.

He depos'd, That being at Mr. *Ireland's* Chamber in *Russel Street*, where was also *Fenwick* and *Grove*, he heard them discourse of 50000 Men to be rais'd for settling the Protestant Religion; And the Deponent demanded what poor Tradesmen must do then? *Fenwick* answer'd, he need not fear Church-Work enough for making Crucifixes, &c. And they said the Lords *Bellasis*, *Powis*, and *Petre*, were to command the Army; and that

one *Passon*, a Council, who was a Catholick, told the Deponent, That the Lords had given out Commissions to Sir *Henry Bennysfield*, Mr. *Stone*, Mr. *Talbot*, and others, for raising an Army: And that my Lord *Arundel's* Butler told the Deponent, that one *Messenger* was to kill the King, but that the Deponent afterwards met *Messenger*, and *Messenger* said he was off of it.

Mr. *Fennison* having been sworn, appear'd.

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The Papists Opinion of the Powder Plot.

He depos'd, That he was at Mr. *Ireland's* Chamber in *Russel Street* in *June 78*, and discoursing about Religion, Mr. *Ireland* said, the Romish Religion should be publickly own'd again in *England*; and that there was but one in the Way that hinder'd it from flourishing here, and it was an easy Matter to poyson the King; and that Mrs. *Anne Ireland* being by, rebuk'd her Brother, and ask'd him why he talk'd so; and then Mr. *Ireland* answer'd, with some *Salvo*, he did not think it ought to be done: That the Deponent saying, It was a Scandal to Religion to propagate it by such Means, and that the Gun Powder Treason had done the Cause no Service, Mr. *Ireland* answer'd, That was but a State Trick, and an Invention of my Lord *Cecil's*.

Mr. *Ward*. Were you with Mr. *Ireland* at any Time afterwards?

This is contradicted at *Orea's* Trial by forty Witnesses.

Fennison. I was with him the 19th of *August*, at his Chamber in *Russel Street*, and he was pulling off his Boots, being just come Post out of *Staffordshire*: I remember very well it was upon a *Monday*, the 19th of *August*, for I had been at *Windsor* the *Saturday* before, to take my Leave of Mr. *Bowes* before I went my Journey into the North, (and on the 14th of the same Month I came from *Tunbridge*;) Mr. *Ireland* asking me how the Court diverted themselves at *Windsor*, I told him his Majesty went out early in a Morning a Fishing, and had but little Company with him: And *Ireland* reply'd, he wonder'd the King should go so thinly guarded, and that he were easily taken off; I said, God forbid; and he then qualify'd it with some Expressions, so that

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I took no Notice of them, but discoursing of it after the Plot broke out to my Father, I said, Pray God there be nothing in this Plot; reflecting upon the Discourse that had happen'd between Mr. Ireland and me.

Sir Robert Sawyer. When did you go from London into the North?

Jennison. I went the 4th of September, as the Coach-Book will make appear.

L.C.J. Sir John Southcott and his Lady, and many more, have sworn Ireland was with them in their Journey to Staffordshire, and at Tixball, from the 3d of August to the 16th. And then Witnesses appear'd that saw him in Cheshire: And there was other Witnesses that swore he did not come to Town till the 13th of September. Now this Gentleman says, he went his Journey into the North the 4th of September, and therefore it must be before the 13th he saw Mr. Ireland.

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Corker. Did you make this Discovery before the pretended Plot came out? When did you leave your Religion?

Jennison. About three Months ago.

Corker. This Man did not leave his Religion, or make this Discovery, till it appear'd advantageous to him.

L.C.J. They say his Father is a Gentleman of 1000*l.* per Annum, and this is his eldest Son.

Mr. Recorder, There is an elder Brother, my Lord, but he is a Priest.

Jennison. I don't know that of my own Knowledge, but he is in Newgate about it.

Corker. He does not know it, and therefore he is not Heir; and the Advantage of his Estate is not such but he may lay hold of a Reward for this Discovery.

Mr. Bowes was sworn.

He depos'd, That he saw Mr. Jennison the Beginning or the Middle of August at Tunbridge, and that he came from thence to London, but that the Deponent was gone out when Mr. Jennison came to take his Leave of him at Windsor.

Mr. *Burnet* was sworn.

He depos'd, He met Mr. *Jennison* going to *Windsor* about the Middle of *August*.

L. C. J. This does not so much relate to the Prisoners, but is to satisfy the World that what Mr. *Ireland* asserted at his Death, and what has been sworn by so many Witnesses that Mr. *Ireland* was out of Town in *August*, is not true.

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Then Mr. *Otes*, having been sworn, appear'd.

Mr. *Ward*. Pray, Sir, will you tell your Knowledge of this Matter.

Otes deposes that the Queen was to assist Sir George Wakeman to poison the King.

Otes. In *July* Mr. *Abbey* came to Town sick, and Sir George *Wakeman* wrote him some Instructions how he should order himself at the Bath: And in this Letter Sir George did write, that the Queen would assist him to poison the King: Two or three Days after I saw Sir George *Wakeman* and Mr. *Abbey* together, and Sir George was in a writing Posture, and I saw him lay by his Pen and go away, and the Paper that lay before him was not dry, and was the same Hand with which Mr. *Abbey's* Note was writ: And Mr. *Abbey* told Sir George, while they convers'd together, of some Instructions, concerning a Commission to make Sir George Physician to the Army.

Some Days after this, a Gentleman came to the Fathers at *Wildhouse*, with Commands for them to attend the Queen at *Somerset House*; and there went the Fathers *Harcourt*, *Keines*, *Langworth*, *Fennick*, and another, and I attended them thither, and waited in an Anti-chamber while the Fathers went in to the Queen; and I heard a Woman's Voice, saying, That she would assist them in propagating the Catholick Religion with her Estate, and that she would not endure these Violations of her Bed any longer, and that she would assist Sir George *Wakeman* in poisoning the King: When the Fathers came out, I desir'd to see the Queen, and had a gracious Smile from her; and while I was in her Presence, she ask'd Father *Harcourt* if he had receiv'd the last 1000 *l.* and it was the same Voice that I had heard without, and there was no other Woman with the Queen: And in the same Month of *July* 10000 *l.*

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was propos'd to Sir George Wakeman to poison the King, in the Presence of Harcourt, Fenwick, and, I think, Ireland. *Abby* propos'd it in the Name of the Provincial, who had authoriz'd him so to do. And Sir George said it was too little.

Otes deposes that Sir G. Wakeman refus'd to accept 10000 l. for poisoning the King.

L. C. J. How did the Discourse begin?

Otes. There was a Meeting of the Fathers to this very Purpose, and there they break it to him, but how it was introduc'd I don't remember: And there were Letters presently sent to *Whitebread* that Sir George had refus'd 10000 l. and *Whitebread* order'd the Fathers in London to propose 5000 l. more, which was done, (but of this last Proposal I speak only by Hearsay) and it was accepted, and 5000 l. receiv'd in Part, and Sir George Wakeman's Name subscrib'd to the Receipt in the Book, which was kept by the Fathers at *Wildhouse* sometimes, and sometimes by Mr. Langborn.

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Sir R. Sawyer. What did you see writ in that Book?

Otes. Memorandum. Such a Day 15000 l. was propos'd to Sir George Wakeman, which he accepted: And then underneath this Receipt: Receiv'd in Part of this 15000 l. 5000 l. of Father Harcourt, by Order of Edward Coleman. George Wakeman.

15000 l. accepted.

And there was the Goldsmith's Name to it; I can't be positive, but I think, in my Conscience, in was *Raleys*. There was but one Date to the Memorandum and Receipt, and that was some Day between the Beginning and Middle of August; I can't tell where the Money was paid, for I was sick at that Time.

L. C. J. Did you see the Commission for Sir George to be Physician General of the Army?

Otes. Yes, I saw it in Sir George Wakeman's Hands, when he was writing at Mr. *Abby*'s.

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L. C. J. What Note was that he left behind him there?

Otes. It was an Apothecary's Bill, I suppose.

L. C. J. Did you ever see Sir George write in your Life?

Otes. I saw him in a writing Posture, and I saw him lay by the Pen, and when he was gone

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away the Ink was not dry, and the Gentleman who fate by him was lame of both his Hands, and could not write. And it was the same Hand that was to the Letter to *Asbby*, and to the Receipt for the Money.

Sir G. Wakeman. Have you not said positively, you did not know the Hand?

Otes. I do not remember I have said so.

Sir G. Wakeman. Have not you said before the King and Council, you never saw me, and did not know me?

Otes. My Lord, having been up two Nights, and very much indispos'd, I might not charge him so home then; but now I have a proper Light whereby I may see a Man's Face, I can say more to him: This is the same Gentleman.

Sir G. Wakeman. This is just *Coleman's* Case, the Light was in your Eyes!

L. C. J. Did you ever see this Gentleman before he was at the Council.

Otes. Yes, I saw him at *Asbby's* Chamber two several Days, once was when the 10000 *l.* was propos'd to him.

Sir G. Wakeman. What Day was that Proposal made to me?

Otes. It was made by Mr. *Asbby* in *July* before he went to the *Bath*, in the Presence of Father *Harcourt*, *Ireland*, and *Fennick*.

Sir G. Wakeman. He will be sure to name those who can be no Witnesses: If he knew all these Things when I was examin'd before the Council, why did he say he knew nothing of me, but concerning a Letter written from Mr. *Asbby* to Mr. *Fennick*; and if he had said what he does now, can any one think I should have had my Liberty so long after.

L. C. J. Dr. Otes, why did you not give the same Evidence then you do now?

Otes. I can give an Answer to it by-and-by, when he has prov'd what I said there. — As to *Corker*, he had a Patent from the See of *Rome* to be Bishop of *London*, and was privy and consented to the Proposal made by the Benedictine Monks, whereof he was one, to contribute 6000 *l.*

Corker, Bishop of
London.

to

to the Society of *Jesus* towards carrying on the Design: He wrote it in a Letter from *Lamspring* in *Germany* in *August* last, that he consented to it; for he is President of the *Benedictine Monks*, and therefore it was necessary he should give his Suffrage; and he had been with Father *le Chaise* and the *English Monks* in *Paris*, and had given an Account how the Design went on in *England*; I saw it in the Letter which was directed either to Father *Harcourt* or Father *Howard*; I knew his Hand, having seen a Note he gave under his Hand to Mr. *Fenwick*, about the receiving some Money.

Then *Corker's* Examination was shewn him, and *Otes* said, He knew it to be *Corker's* Hand that was subscrib'd.

Otes. *Corker* used to dispose of the Queen's Charity, as it was call'd; but he employ'd it towards carrying on the Design, and said, He had the Queen's Order so to do.

Sir R. Sawyer. Was he privy to the Consult the 24th of *April*.

Otes. Yes; for he excepted against *Pickering's* being employ'd, and said, It was more proper to have a Layman than a Religious that attended the Altar.

L. C. J. Do you know that the 6000*l.* was afterwards paid?

Otes. I believe it was paid, for our Fathers said they had receiv'd it.

Mr. Recorder. What say you to the rest of the Prisoners?

Otes. I can charge Mr. *Marshall* with being present at the *Benedictine Convent*, when the 6000*l.* was agreed to be contributed; and I know he was privy to *Pickering's* Undertaking to kill the King, because he said, they had better take a Layman, as *Corker* said: And as to *Rumley*, he was privy to the Contribution of 6000*l.* and pray'd God it might have good Success, and that the Catholick Cause might once again flourish in *England*. This was in the Month of *August*.

Corker. You say I had a Patent to be Bishop of *London*, did I accept it?

Otes.

Otes. I saw it in your own Hand, and you said, You hoped it would not be long before you should exercise your Episcopal Function. I remember also as to *Marshal*, that he was present when some of the Fathers were laying Wagers the King would eat no more *Christmas* Pies, and he went Halves with one who laid he would not.

Marshal. How long have you known me?

Otes. I have known him these two Years, and seen him officiate at the Altar, but never convers'd with him.

Marshal. He says he has known me these two Years, and knew I was engag'd in this Business, it is strange he should never converse with me: What Day of the Month was this Consult?

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Otes. It was between the Beginning and the Middle of *August*; and 'tis a great Privilege that I tell you the Month.

Marshal. My Lord, it is impossible to make a Defence, if Circumstances of Time and Place be not mention'd.

Otes. It was at the Benedictine Convent, and either the Day before or the Day after the Feast of the *Assumption*.

Marshal. That is the 15th of *August*; now he hath vouch'd it positively.

Otes. Nay, I will not be positive.

L. C. J. If he will say so, let him; but People are not to be snapp'd up thus.

Otes. I do verily believe, it was the Day before or the Day after.

Marshal. Would this be Evidence against a Murderer or Highwayman, unless the Day were fix'd exactly?

L. C. J. You see he will not answer positively.

Marshal. Was I at any other Consult besides this?

Otes. Yes, you were the 21st of *August*, if that fell on a *Wednesday*, when Letters came from Archbishop *Talbot* giving an Account of the *Irish* Affairs; and desiring Commissions might be sent to *Ireland* for Officers in the Army that was to be rais'd: This was at the Benedictine Convent, and there *Marshal* agreed to the sending the Commissions, and to the poysoning of the Duke of *Ormond*.

wind. — My Lord, I desire I may retire, because I am not well.

L. C. J. You must stay till their Defence is over, but shall have any Refreshment.

Mr. Bedloe having been sworn, appear'd.

Sir R. Sawyer. Pray, speak your Knowledge concerning the Prisoners at the Bar.

Bedloe's Evidence of Sir G. Waldman's Design of poysoning the King.

Bedloe. The latter Part of last Summer, I think, about the Beginning of August, I was in Mr. Harcourt's Chamber, and Sir George Wakeman came in, and took a Turn or two about the Room, and seem'd discontented, after which he said, *For what am I drill'd on this in a Concern of this Importance? Is this a Business to be slighted? I have no Performance of your Promises.* Said Harcourt, *Why, what would you have?* We are ready for you. And Sir George answer'd, *Then I am ready for you;* and Harcourt took a little Note out of his Cabinet and gave it to Sir George, and said, *There is a Bill for you, I have been to Day at Whitehall and receiv'd it by the Queen's Order from such a Gentleman, and 'tis upon such a Man for 2000 l.* And Sir George answer'd, *'Tis well some Body gives me Encouragement; I have more Encouragement from my good Lady and Mistress than from any of you.* Nay, said Harcourt, for Encouragement, that you shall not want, for the rest shall be paid in due Time; and added, *But, Sir George, this must be well follow'd and closely observ'd, because so much depends upon it; for if we should miss to kill him at Windsor, and you miss your Way, we will do it at Newmarket.* And Sir George answer'd, *If I find you ready, I will be ready in all Things.* I do not remember whether the Word Poyson was mention'd, but I knew by what Mr. Harcourt and others had told me, that Poyson was meant by it: There was no Body in the Room but Sir George, Mr. Harcourt, and my self; and Sir George ask'd Mr. Harcourt who I was? And he answer'd, A Friend that had been long engag'd in our Business, and is to do the next great Work to yours: And Sir George went to see if his Bill would be accepted; and I believe the Bill was upon some Goldsmith in Fleetstreet, because a little while after I met him near St. Dunstan's Church, and ask'd

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ask'd him if he had got his Bill accepted already, and he said, It was accepted; and I said, When is it to be paid? and he answer'd, He was to receive it in the Afternoon. I had known Sir *George* about five Years before, but was not very well acquainted with him, tho', upon the Character Mr. *Harcourt* had given me, I thought I might take the Freedom to ask him those Questions. I ask'd *Harcourt* after Sir *George* was gone, Whether this was Part of the 15000 *l.* and he said, We have not adjust'd that Matter yet, but he receiv'd this only as a present Supply; and I ask'd, if it were for the old Business; and, says he, it is for the same Design, if we should fail of other Means. And he did in a short Time receive as much as made it up 5000 *l.*

L. C. J. What do you know of the other Prisoners?

Bedloe. I heard Mr. *Corker* talking with *le Fevre* what Letters they had receiv'd from beyond Sea, and how forward they were in their Proceedings here, about raising an Army, what Interest he had in the People, who had been sent into the Country, and the like.

Corker. Did you hear such Words, as *Killing, Army, or Design*?

Bedloe. Every one of those Words were used, but I don't take upon me to say how they were plac'd: This Discourse was in the great Court at *Somerset-House* in the Piazza, *July* was Twelve-Month.

Mr. *Ward.* What say you to Mr. *Marshal*?

Bedloe. He hath carry'd the same Letters that I brought from beyond Sea, and communicated them to the Country Gentlemen of the Catholick Party that were Assistants to us, particularly to Sir *Francis Radcliff*; and he knew the Contents of those Letters and the Answers to them.

L. C. J. What was the Purport of those Letters?

Bedloe. I have brought a great many Letters, and they did all relate to what I have given Evidence off.

Sir *R. Sawyer.* Can you mention the Particulars of any one Letter.

Bedloe.

Bedloe. He hath twice, to my Remembrance, receiv'd Letters to communicate in the Country, concerning the Subversion of the Government and the introducing of Popery.

Mr. Ward. What do you say to Mr. *Rumley*?

Bedloe. I have been told, he has communicated Letters relating to this Business in the Country, but I can say nothing of it to my own Knowledge.

Sir G. Wakeman. What Day is it you said I had this Discourse with *Harcourt*, and receiv'd a Bill from him? And how do you know it was a Bill for Money?

Bedloe. It was the Beginning of *August*, (I do not speak to a Day) and you read it aloud.

Sir G. Wakeman. Had I any Acquaintance with you?

Bedloe. No; but Mr. *Harcourt* told you who I was.

Sir G. Wakeman. And did I, on the first Sight of you, discover what would endanger my Life? Objection to
Bedloe's Evidence

Bedloe. Ay, and would an hundred times more, if *Harcourt* had told you I was his Confident.

Sir G. Wakeman. You do not know me.

Bedloe. Yes I do.

Sir G. Wakeman. I call God to witness, I don't know I ever saw him before in my Life, and he has a very remarkable Face.

Bedloe. I was well enough acquainted with him when he was at the *Bath*, but that is some Years since; then I took Physick of him.

Sir G. Wakeman. I never was there but once, and that was about two Years ago: And tho' he tells you of a Bill deliver'd me, he neither mentions the Time when, nor on whom it was drawn; here are all the Marks of Falshood imaginable.

Marshal. Let him lay his Hand on his Heart, and declare in the Presence of God, if ever he saw me before he came to the Gate-House, and did not declare there that he was an utter Stranger to me?

Bedloe. I had seen you before at the *Benedictine* Convent in the *Savoy*, and you did not deny but you had seen my Face.

Sir

Sir William Waller was sworn.

He depos'd, That he went to the Prison with *Bedloe*; and that *Bedloe* call'd *Marshall* by his Name as soon as he saw him, and ask'd him if he knew him; and *Marshall* said, He had seen his Face, but did not know him.

Marshall. What Sir William Waller says I must oppose; for *Bedloe* himself knows, that he had Discourse with me in a private Room, before Sir William Waller came.

Bedloe. I went in with Sir William Waller, and I was in no other Room but the common Room, and Sir William Waller withdrew to the End of the Room while I ask'd him some Questions.

L. C. J. He told Sir William Waller your Name was *Marshall*, tho' you went by the Name of *Marsh*.

Marshall. He might know my Name was *Marshall* by them that took me; I had Letters about me then that were directed to me by that Name. But pray, Mr. *Bedloe*, when did you ever see me before you saw me in the Gate-House.

Bedloe. I carry'd Letters to you, and used to converse most with you in the *Savoy*.

Marshall. Prove it by Man, Woman, or Child, that ever you were in the *Savoy* with me in your Life, and I will go to the Gallows, and not say one Word more.

Bedloe. I have Witnesses, but I cannot produce them at present, they are in *Kent*.

L. C. J. It may be he has none to prove he ever was in *Westminster-Hall* in his Life; for who could imagine such a Question should be put to him?

Bedloe. My Lord, I lay in the *Savoy* half a Year at one *Woodroff's*, and I gave Sir William Waller Directions to search in the most material Places of it.

Sir W. Waller. Both *Otes* and *Bedloe* did give me Directions to search the *Savoy*, and told me such a particular Room where *Pickering* lay, and of such a Closet, and many other Things.

Marshall. *Otes* made Searches before, and *Bedloe* might have his Knowledge from him and others.

Bedloe. I

Bedloe. I gave Sir William Waller Directions to search under such a Bench in *Pickering's* Apartment, where he found the Gun that was to kill the King.

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L. C. J. Well, Sir George Wakeman, will you call your Witnesses?

Sir G. Wakeman. Here is Mr. Chapman, Mayor of Bath, who receiv'd this very Note from Mr. *Asbby*, concerning my Directions for him at the Bath, and I think he has Part of the Letter still.

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Sir George calls his Witnesses.

Otes. That Letter was at least half a Sheet of a Side, close written, wherein were those Passages I mention'd; and I remember, he was to take a Pint of Milk, Morning and Evening, and have so many Strokes at the Bath; but this was soon after Mr. *Asbby* came to Town, I believe, ten Days before he went to the Bath.

L. C. J. Was the Business of killing the King in the same Letter with the Physical Directions?

Otes. Yes, my Lord.

Then Mr. Chapman appear'd.

Chapman. The 17th of July last, Mr. *Thimbleby*, [i.e. *Asbby*] came to the Bath, he was about eighty Years of Age, very feeble and infirm: He told me Sir George Wakeman, had recommended me to him, and desir'd I would provide a Lodging for him as near the King and Queen's Bath as I could, and I did so; then he shew'd me a Letter from Sir George, of which this is the lower Part of half a Sheet of Paper; there was full Directions how to take the Physick, and after that for using the Bath, and then the Pump: I took off this Latin Bill which concerns me, and gave him the rest; tho' my Son and I both read the English Part, and upon the Word of a Christian, there was nothing mention'd of killing the King.

L. C. J. Do you know whose Hand it was?

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Chapman. No; nor was there any Name subscrib'd to it.

L. C. J. Then this cannot be the same Letter, for that Mr. *Otes* speaks of was Sir George's own Hand, and his Name subscrib'd to it.

Sir G. Wakeman. I never writ any other Letter, but what was dictated to my Man, and sent by *Asbby*

Albby to the *Bath*; he has own'd before the Lords that I sent but one Letter; and had he mention'd what he has now to be in it, I had been taken into Custody; but I had my Liberty, and might have gone to *Constantinople* if I would; and certainly I should have provided for my self, if I had known my self Guilty, especially when I saw so many sent to Prison upon that Account.

Mr. J. Atkins. *Mr. Chapman*, was there any Milk mention'd in that Letter?

Chapman. No; it is ridiculous to drink Milk with the Waters, it will make it curdle.

Otes. That is not the Hand the Letter I saw was in; and the Direction of the Milk was for the Time he staid in Town.

Sir G. Wakeman. Why should I repeat the Number of the Strokes twice, and write two Letters about one Thing.

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Mr. J. Pemberton. This might be written to serve a Turn very well.

Hunt was call'd.

He depos'd, That his Master, *Sir George*, coming Home late and indispos'd, and *Mr. Albby* having sent for some Directions for the *Bath*, *Sir George* bid the Deponent take a Pen and Ink and write what he dictat'd; and when he had written, there was some Mistake in it, which *Sir George* bid him correct; and he writ it over fair after *Sir George* was a Bed, and carry'd it to *Mr. Albby* before *Sir George* wak'd next Morning: And there were only Directions in it, what to do at the *Bath*; *Mr. Albby* was to go the next Morning.

Mr. J. Atkins. Do you know any thing of *Mr. Albby's* drinking Milk?

Hunt. He was saying, he was advis'd by a Friend of his to drink Milk while he was in Town.

L. C. J. That is consistent with *Mr. Otes's* Testimony.

Henningham was call'd.

He depos'd, That he was present at the writing of this Letter, and *Sir George's* Servant wrote it as he dictat'd; and that there was no such Thing as *Otes* mention'd in it; and said farther, that

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that he heard *Asbby* say, he wanted Directions to go to the *Bath*.

Sir *Philip Lloyd* was call'd.

Sir *G. Wakeman*. Pray, what did Mr. *Otes* say of me before his Majesty and the Council?

Sir *Ph. Lloyd*. It was on the 31st of September, Mr. *Otes* said, he had seen a Letter, to the best of his Remembrance, from Mr. *White* to Mr. *Fenwick* at St. *Omers*, wherein he writ, that Sir *George Wakeman* had undertaken the Poysoning of the King, and was to have 15000 *l.* for it, of which 5000 *l.* had been paid him by the Hands of *Coleman*: Sir *George*, upon this, was call'd in, and he utterly deny'd it all, and did carry himself as if he were not concern'd at the Accusation; and because they thought this Evidence not Proof enough to commit him, they call'd Mr. *Otes* again, and my Lord Chancellor desir'd him to tell, if he knew any Thing personally of Sir *George*; and *Otes* lift up his Hands and said, *No, God forbid I should say any Thing against Sir George Wakeman, for I know nothing more against him.*

Otes. I remember not one Word of all this.

Sir *G. Wakeman*. This is a Protestant Witness too as well as the other.

Otes. I do appeal to the whole Board, whether I was in a Condition to make any Answer at all, when, by reason of being hurry'd up and down, and sitting up two Nights, I was scarce *Compos mentis*.

L. C. J. Was Mr. *Otes* so spent that he could not say, *I have seen a Letter under Sir George Wakeman's own Hand*. Truly, Sir *George* urg'd it right, That he should not have been permitted to have his Liberty so long, if you had charg'd him home then.

Otes. They were such a Council as would commit no Body.

Mr. *Recorder*. That was not well said.

Sir *G. Wakeman*. He reflects on the King and Council.

L. C. J. You have taken a great Confidence, I know not by what Authority; but the Council's not committing him is an Argument to me, that

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Otes's Evidence suspected.

He reflects on the Privy-Council.

you did omit to charge him with this Letter at that Time.

Then Sir *George* desir'd a Copy of *Otes's* Examination before the House of Lords might be read as Evidence; and Mr. *Sydcot* appear'd, and said, it was a Copy of the Record of the Lord's House.

An Examination taken in another Court cannot be read as Evidence, unless it be prov'd to have been taken upon Oath.

L. C. J. *North*. If there be a Record in any Court of Record, that such a one appear'd in Court, 'tis an Evidence that he was in Court, and a Record of it. But when there is an Examination in a Court of Record, these not passing the Examination of that Court, but being taken by the Clerks, we always in Evidence expect there should be somebody to prove that such an Examination was sworn and subscrib'd to.

L. C. J. Have you any Witnesses here can testify what Mr. *Otes* said there; and, particularly, what Answer he made to my Lord Chancellor when he ask'd him, How he knew it was your Hand? You should have had the Clerks here that made the Entry, or saw him set his Hand to the Examination.

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Sir *George* having no Witnesses, it was not admitted to be read.

Query. If a Clerk of the Council may be examin'd generally what was done at the Board.

Then he desir'd Sir *Philip Lloyd* might be examin'd what *Otes* and *Bedloe* depos'd before the Council-Board at their last Examination. But the Chief Justice was of Opinion, Such a general Question was nor fit to be ask'd of a Clerk of the Council without Leave of the Board; and Sir *George* waiv'd it.

L. C. J. Mr. *Rumley*, have you any Witnesses?
Rumley. I think I have.

Sir *R. Sawyer*. There is no need of any; we have but one Witness against him, and he must be acquitted; but I desire Sir *Thomas Doleman* may be examin'd as to the Condition Mr. *Otes* was in when he was examin'd by the Council if he had any Thing against Sir *George Wakeman*.

Sir *Thomas Doleman* was sworn.

He depos'd, That *Otes* had been very much fatigu'd in running about in the Wet for two Nights together, with a Guard, in Search of the Conspirators and their Papers; and that when he was

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call'd before the Council, he was in so weak a Condition, he would fain have been dismiss'd; and that he was in such Disorder, the Deponent believ'd he was scarce able to give a good Answer when he was examin'd; and added, That Sir G. Wakeman did not deny the Charge so positively as one that had been innocent would, in his Opinion as well as others; but that Sir George there recounted the Services that he and his Family had done the Crown, and how instrumental they were in the King's Restoration, which gave Offence to the Council.

L. C. J. Mr. *Corker*, what have you to say?

Corker's Defence.

Corker. My Lord, it is an easy Matter to devise Crimes, and frame Accusations against innocent Men, in such a Manner that the contrary can't possibly be demonstrat'd; therefore there ought to be some Probability in the Testimony as well as downright Swearing, otherwise Mr. *Otes* and his Companions may, upon their bare Oaths, by turns hang up all the innocent Men in the Nation: And then, he that swears, ought to be himself a credible Witness; but these who swear against me, are Men of scandalous Lives.

L. C. J. You must not heap up Contumelies and call Men Names when you have prov'd nothing against them: If you can prove any Thing, do it.

Page 385.
Witnesses are not
to be viliſy'd
without Proof.

Corker. Then, my Lord, as to the Probability of the Thing; Mr. *Otes* does not only make me guilty of this grand Conspiracy, but he involves the Nobility, Gentry, and whole Body of the Catholicks in this Treason: And, can it be suppos'd, that so many Persons of Honour and Estates, who were Men of unblemish'd Characters, and liv'd in Peace and Quiet under the Government of so good a King, should hazard their Honours, Lives, Families, Bodies, and Souls in such a Design, wherein so many Thousands of People, and almost a whole Nation, were to be over-whelm'd; that such vast Armies should be rais'd, and Foreign Nations engag'd in the Plot, and no other Evidence, no farther Proofs of it, than the positive Oaths of Mr. *Otes* and Mr. *Bedloe*.

The Improbability of the Plot
in general.

The TRIAL of

L. C. J. Yes, for your Army there are Mr. *Dugdale* and Mr. *Prance*.

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Corker. Considering what these Persons are, their vile Oaths, the Encouragements they have met with, such Endearments and Caresses as they have found, their Testimony is not much to be regarded: As to Mr. *Otes* saying I went to *Lampspring* in *Germany*, that is impossible, for that is in the farther Part of *Westphalia*, and I was not gone six Weeks: Then he says, I was President of the *Benedictines*, and that therefore the Design could not go on without my being made privy to it, when it is very well known, and I shall be able to prove, that Mr. *Stapleton* was President, and that I never was, by Mr. *Rumley*, who is one of the Lay Brothers of the Order.

L. C. J. He cannot be a Witness for you or against you in this Tryal.

Corker. Then, my Lord, when they came to search for *Pickering*, Mr. *Otes* and the Officers came to my Chamber, and yet did not apprehend me till a Month after; now it is strange, if I was *Pickering's* Superior, as he says, and privy to all these Things, they should not apprehend me; but my Name was not mention'd among those he accus'd then, and this is a new Invention of his; and I refer it to the Consideration of the Jury, whether, if he has said in his Examination before the Lords, that he did not know any thing else but what he had declar'd of any Man whatever, whether this Charge ought now to be believ'd.

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L. C. J. *North*. First prove what he said before the Lords by Witness, and then make your Observations.

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Corker. I cannot prove it otherwise than by the Record, and I desire it may be look'd upon.

L. C. J. That hath been answer'd already.

Then Mr. *Corker* call'd Mrs. *Ellen Rigby*.

Corker. I desire she may be ask'd, whether I was not in the House when the Search was made for

for *Pickering* in the *Savoy*, and he was taken; whether they then charg'd me with any Thing.

Marshal. And the same of me.

Mrs. Rigby. You were both in Bed then, and the Company that came in never ask'd for you; but when they saw you, said they had nothing to do with you: And Mr. *Otes* was there then.

Corker. Now it is incredible he should search for Traytors, and, as he says, knew us to be such, and should not ask for us: Nay, when he saw us, he should leave us there, and never bid the Officers secure us.

Objections to
Otes's Testimony.

Mr. J. Pemberton. Who ask'd you who were in the House, when you told them?

Rigby. There were five or six, particularly Mr. *Otes* and Mr. *Bedloe*.

Corker. Have you not heard that Mr. *Stapleton* is President of the Benedictine Monks?

Rigby. Mr. *Stapleton* hath been President these four Years and a quarter.

L. C. J. Who officiated in his Absence?

Rigby. I know not who, but Mr. *Corker* never did in his Life.

Corker. Pray ask her if she knows of any Consult of the Jesuits in the Benedictine Convent.

L. C. J. How should she know that?

Corker. Because none came to the House but she must entertain them; there was no other Servant but she.

Marshal. I desire she may be ask'd, if ever she saw Mr. *Otes* or *Bedloe* in the House in her Life?

Rigby. I saw Mr. *Otes* in the House this Summer was Twelve-Month; he came a begging. And Mr. *Pickering* bid me shut the Door and never let that Man come in again.

Marshal. This was in the very Heat of the Plot, and he was employ'd to carry on the Conspiracy, as he says: And that we should suffer him to be in such Necessity and sent away with a Flea in his Ear, when he cou'd gain such Advantages by discovering us, I appeal to the Court, whether this be probable — And, my Lord, when I was apprehended, I was not sought for or nam'd as a Traytor, but coming accident-

ally into a House where they were actually searching, tho' I saw the Constable at the Door and Lights in the House, yet I went in and ask'd if such a one was within; and I think this Confidence might acquit me.

L. C. J. *Sir William Waller*, is this so?

Sir William Waller. When I came to search that House, I plac'd one at the Door, and order'd him to let any Body come in but no Body go out: And when I was searching, this Person came and knock'd at the Door, not knowing, I suppose, that the House was searching; for when the Door was open'd, and he was let in, and understood it, he endeavour'd to get away.

Marshal. I wou'd not willingly contradict *Sir William Waller*; but God is my Witness, I never knock'd, the Door was open, and I cou'd have gone away again afterwards if I wou'd: I was in an outward Room by my self, and *Sir William* knows when they came back and found me there, the Constable and the rest wonderd I was not gone.

L. C. J. If you have any Witnesses to prove it, call them.

Marshal. If it were worth the while to prove, that if I wou'd I might have gone away, it might be made appear: But farther I shall shew that *Mr. Otes* was mistaken in me, for he told *Sir William Waller* of a Mark that was behind my Head, and *Sir William Waller* made me pull of my Peruke and turn my Back that he might look for it.

Sir William Waller. When I brought him to *Mr. Otes* I did, indeed, desire to see his Peruke off, to see if there was any Appearance of a shaven Crown, but I know nothing of a Mark: But this I know, as soon as he came in *Mr. Otes* call'd him by his Name.

Then *Marshal* desir'd *Sir Philip Matthews* might be call'd to testify that *Otes* said he was a Stranger to him, &c. but *Sir Philip* did not appear.

Marshal. Sure *Sir William Waller* knew that Priests do not go shaven here in *England*, where it is Death for them to be discover'd.

Marshal.

Marshal desir'd he might have two or three Days Time allow'd him to send for Witnesses, to prove he was at *Farnborough* in *Warwickshire* in *June*, *July*, and *August*, when *Otes* had testify'd he was in Town, and said, he hop'd the Court wou'd not throw away his Life, when in three Days Time he cou'd bring Witnesses to prove it.

L. C. J. Then we must throw away the Lives of the Jury, for they must be kept fasting till they give their Verdict.

Marshal. There have been those who have been upon their Tryals [meaning *Whitebread* and *Fenwick*] and sent back to Prison without the Jury giving a Verdict, and after try'd again. A Jury discharg'd without giving a Verdict.

L. C. J. The Jury were wholly discharg'd of them.

Marshal. And if you have any regard to my Life, you may discharge them of me.

Then *Sumner* was call'd.

Marshal. I desire he may be ask'd, If I had not Witnesses here last Sessions when I expected to be try'd, to testify I was at *Farnborough*.

L. C. J. That is not a Question to be ask'd, what another Person can swear, but tho' it be improper, we will ask him: Were you sent down for Witnesses?

Sumner. Yes, my Lord, and they came up.

L. C. J. Why are they not here now; the last Sessions was adjourn'd to a certain Day?

Marshal. Your Lordship thinks we have a better Purse than we have, and, it may be, they cou'd not leave their Business, and be at the Charge of coming up again; but give me three or four Days Time and I will have them up.

Mr. J. *Dolben*. You knew as much before as you do now, or why did you send for them up then? And why then had you not them here to Day?

Then the Prisoners call'd Mrs. *Skeldon*.

She depos'd, That Mr. *Stapleton* had been President of the *Benedictines* for four or five Years, and that Mr. *Corker* never officiated for him.

Corker. Mr. *Otes* charges me positively only with consenting to the *Benedictines* Contribution of

6000*l.* which, he says, they could not do without my Leave, because I was President; now I desire it may be observ'd, here are several Witnesses who depose Mr. *Stapleton* was President, and that I never was in my Life.

Sir George Wakeman. It was imputed to me as a Crime that I did not, before the Council, sufficiently detest the Offence I was charg'd with: I now declare, that I detest and abominate the Crime laid to my Charge, and call God to witness I never was at any Consultation about it in my Life, nor ever receiv'd any Bill for Money upon this Account: And I wish I may never enter into the Kingdom of Heaven if I receiv'd one Farthing for any such Thing.

Corker. He says, I was employ'd in distributing Money: I protest, before God, I never distributed any Money upon such an Account; nor did I ever deliver or hold it as a Matter of Faith or commendable Doctrine, that it was lawful, for the promoting of the Catholick Religion, to murder the King or destroy my Country: Nor do I think that the Pope, or any one upon Earth, can grant a Dispensation for doing it.

Marshal. If no Door of Mercy can be open'd upon any Consideration offer'd by the Living, yet the loud Cries of the Dying, the earnest Vows and solemn Protestations of Innocence, made by those who were lately executed, surely will have some Weight; for it must be confess'd, that either they conspir'd finally to damn their own Souls, or that they were not guilty of what they and we stand jointly charg'd with.

Mr. J. Pemberton. Will you affront the Court, and vouch the Truth of those Speeches made at the Gallows, and affirm them to be innocent when they have been found guilty and executed according to Law?

Marshal. I only desire some Consideration may be had to the Words of those dying Men.

L. C. J. If your Religion were not made up of Equivocation and Lying, and you had not Indulgencies and Dispensations for it; and if Killing Kings were not deem'd meritorious; if this were

The Prisoners
urge the Protes-
tations of the 5.
J. sits at their
Execution, as an
Argument against
the Plot.

Page 393.

The Chief Justice
answers that Ob-
jection.

were not avow'd by your Popes and great Men, your Argument might have some Weight: If you have any Thing to say in your Defence speak it; but as for your Religion, we know what it is, and what merciful Men you are; you may have Tricks enough to gull your own Party, but Protestants can look through all your Acts.

Corker. As to those damnable Doctrines, we profess our selves innocent of them, and desire the Jury may not go away with such a Notion, that we entertain such Principles of Religion; they are horrid Crimes, and I protest against them, and hope the Jury will take Notice of it.

Page 394.
They disclaim the King-killing and deposing Doctrines, &c.

Then the Lord Chief Justice summon'd up the Evidence; and as to *Rumley*, he directed the Jury to acquit him, there being but one Evidence against him: And he said, he thought *Otes's* Evidence, as to Sir *George Wakeman's* Hand-writing, was very slight; and *Bedloe's* Evidence he did not seem to give much Credit to; nor did he think the Evidence of *Otes* and *Bedloe*, as to *Corker* and *Marshall*, conclusive; but left it to the Jury to be guided by their own Consciences.

The Chief Justice directs the Jury.

The Jury withdrew, and after about an Hour's Recess, brought in all the Prisoners, Not Guilty.

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All the Prisoners are acquitted.

The TRYAL of CHARLES KERNE for High Treason, in having taken Priests Orders, by an Authority deriv'd from the See of Rome, before the Lord Chief Justice Scroggs at Hereford Affizes, the 4th of August, 31 Car. 2. 1679.

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THE Indictment set forth, That the said *Charles Kerne*, late of *Woolby* in the County of *Hereford*, being a Native of this Kingdom of *England*, and made and ordain'd a Priest by an Authority deriv'd from the See of *Rome*, the 29th of *April*, in the 31st Year of the King, did

The Indictment for High Treason in taking popish Orders and coming into *England* (being a Subject of this Crown.)

did traitorously come to, and remain at *Weobly* aforesaid, in the said Kingdom, against the Form of the Statute in that Case made and provided, and against the King's Peace, &c.

To which Indictment he pleaded Not Guilty. After which a Jury was sworn, and charg'd with the Prisoner; and then the Witnesses for the King were call'd: And first,

Edward Biddolph was sworn.

He depos'd, That he knew such a Man as the Prisoner about six Years before, and had seen him at Mr. *Somersets* at *Bollingham*, but he could not be positive this was the same Man.

Then *Margaret Edwards* was sworn.

Margaret Edwards depos'd, That the 29th of *May* was twelve Month, one *James Harris* desir'd her to go to Mrs. *Monnington's* at *Sarnsfield*, for some Physick for his Wife who lay very ill, which she did, and that Mrs. *Monnington* having discours'd with her about the sick Woman, she took the Deponent into the Chapel, and there she saw *Kerne*, the Prisoner, at the Altar in a Surplice, &c. and that she saw him deliver the Sacrament to four or five People there.

L. C. J. What did he say?

Edwards. He said *Corpus Christi*, or some such Words; I was then a Catholick my self, and have receiv'd the Sacrament of Priests several Times, but I did not then.

L. C. J. Did you ever see him since?

Edwards. No.

Prisoner. I desire she and *Mary Jones*, the other Witness, may be kept asunder, for she has been instructing of her.

Edwards. I bid her take Care she swore neither less nor more than the Truth.

I. C. J. And what did she tell you she would say?

Edwards. She said when she liv'd at Mr. *Somersets*, where Mr. *Kerne* usually was, several People us'd to come thither, and go up into the Chamber; and once she listen'd and heard Mr.

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Page 402.
Evidence that the
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Kerne say something in *Latin*, which she said was *Mafs*.

Prisoner. I desire to know where this Woman saw me first?

Edwards. At Mr. *Wigmore's* at *Luton*.

Prisoner. I never was at *Luton* in my Life.

Mary Jones was sworn.

L. C. J. Did *Margaret Edwards* instruct you what you should say?

Jones. No: She ask'd me what I could say against Mr. *Kerne*, and I told her that on *Sunday* Morning several People came to *Bollingham*, and went up after the *Prisoner*, and he said something aloud that I did not understand.

Page 403.

L. C. J. Did not you tell her you heard him say *Mafs*?

Jones. No, my Lord.

Then *Edwards* was call'd again, and averr'd that she did tell her so, and *Jones* still persisted she never did tell her so, for she did not know what it meant.

The Witnesses being confronted, contradict one another.

L. C. J. Did you never see him give a Wafer, Marry, or Christen.

Jones. There was a Child christen'd in the House, and I was in the next Room and heard Words spoken by Mr. *Kerne*, and there was no one there but my Master and Mistress, Mr. *Latchet* and his Wife, and Mr. *Kerne*.

Prisoner. How could you know a Voice?

Jones. Very easily; there was but a Wall between.

The *Prisoner* call'd Mr. *Hyet* as a Witness for him.

The *Prisoner* call'd his Witnesses.

He depos'd, that *Margaret Edwards* acknowledg'd to him that she did not know Mr. *Kerne*.

Mr. *Weston's* Maid was call'd.

She depos'd, that she saw *Edwards* instructing the other Witness *Jones*; which they both deny'd again upon their Oaths.

Mrs. *Monnington* was call'd.

She depos'd, That she did not know this *Margaret Edwards*, and that she never took up any Stranger to the Chapel in her Life.

L. C. J. Did

The TRIAL of

L. C. J. Did Mrs. *Monnington* know you by Face or by Name?

Edwards. I had been at the House several Times, and this Time I was carry'd up by *Mary Lewis* her Maid; and Mrs. *Monnington* told me that I must put a Plaister of *Diapalma* to the Woman's Back, and give her a Drink with Malt and Raisins.

Mrs. *Monnington.* I might prescribe the Plaister, but the Drink is no Receipt of mine.

Edwards. After we had talk'd of the sick Woman, Mrs. *Monnington* fell into Discourse about Religion, and understanding what I was, desir'd me to go into the Chapel with her.

L. C. J. What kind of Chapel was it?

Edwards. When we came up Stairs, we turn'd in at a Door on the right Hand, and the Altar stood just before the Door, it was richly adorn'd, the Altar Cloth was white, and there was a fine Crucifix upon the Altar.

Mrs. *Monnington.* What were the Cushions off?

Edwards. As I remember they were Needle-Work: The Chapel had abundance of Pictures in it, and I think the Window was on the left Hand of the Altar.

Mrs. *Monnington.* We do not go off the Stairs into the Chapel as she says, neither is it adorn'd as she depos'd, or has any Needle-work in it: But here is my Maid, to whom I deliver all my Medicines, perhaps, can tell if she was at the House.

The Maid depos'd she never saw this *Margaret Edwards.*

Edwards. I have often carry'd the Child, Mr. *Thomas Monnington*, to the House: I lay with him, and tended him, and carry'd him abroad.

Mrs. *Monnington.* I don't remember she ever brought the Child to me, but another Woman us'd to bring him.

Prisoner. My Lord, I hope I am not within the Statute for saying Mass, for many say Masses who are not in Orders.

L. C. J. It is one of the greatest Evidences to prove a Man a Priest that can be. Do you think

we

we can produce Witnesses who saw you take Orders? And do any say Mass but Priests?

Prisoner. That of Bread and Wine they do not.

L. C. J. Do any Christen but Priests?

Prisoner. Yes, they do in Extrems; and I do acknowledge I have read Prayers sometimes — I desire your Lordship and the Jury will take Notice that I have taken the Oaths of Allegiance and Supremacy.

L. C. J. I suppose you will not deny that he who gives the Wafer is a Priest?

Prisoner. There is blessed Bread which others may give.

L. C. J. When you give such Bread, do you not say, *Accipe Corpus Christi*?

Prisoner. We use no such Words.

The Chief Justice, in his Directions to the Jury, told them there was one positive Witness, who saw him administer the Sacrament; as to the other, indeed, she only said she heard him say something in an unknown Tongue thro' a Wall: But he thought Men might be distinguish'd by their Voices, and if they did believe that he did christen the Child there were two Witnesses, and they must find him guilty. He said it was a tender Point, and as he would not shed innocent Blood, so neither would he willingly let a popish Priest escape.

Then the Jury withdrew, and being return'd into Court, brought in the Prisoner, *Not Guilty.*

The Chief Justice directs the Jury.
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The Prisoner is acquitted.

The

Page 405.

The TRYAL of ANDREW BROMMICH, before Lord Chief Justice Scroggs, at Stafford Assizes, the 13th of August, 31. Car. 2. 1679, for High Treason, in accepting Priest's Orders from the See of Rome.

Some of the Jurors discharg'd for being thought popishly affected.

THE Sheriff acquainting the Chief Justice, that one *Allen*, whom he had return'd to serve upon the Jury, had said that nothing was done against the popish Priests above, and therefore he wou'd do nothing against them here, or find them guilty, his Lordship discharg'd him of the Jury, and committed him to Prison till he should find Sureties for his good Behaviour, and discharg'd three others upon Suspicion of their being popishly affected.

The Indictment, For that being a Subject of this Crown, he took popish Orders and refused in England.

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The Indictment set forth, That *Andrew Brommich*, late of *Perry Bar*, in the County of *Stafford*, Gent: being a Native of *England*, and being made and ordain'd a Priest by an Authority deriv'd from the See of *Rome*, did, on the 13th Day of *January*, in the 30th Year of King *Charles II.* come to and remain at *Perry Bar* aforesaid, within this Kingdom, contrary to the Form of the Statute in that Case made and provided, and against the King's Peace, &c.

To which Indictment he pleaded Not Guilty. Then a Jury were sworn, and charg'd with the Prisoner, he challenging none of them, after which the Witnesses were call'd: And first,

Ann Robinson was sworn.

Evidence of the Prisoner's administering the Sacrament after the popish Manner.

She depos'd, That she, with seven or eight others, about *Christmas* last, receiv'd the Sacrament of the Prisoner in a Wafer, according to the Church of *Rome*: And that she receiv'd it of him four Times before, twice at Mr. *Birch's* and twice at Mr. *Parfal's*.

Prisoner. My Lord, I never gave it her, and I desire it may be observ'd, that I have taken the Oaths of Allegiance and Supremacy, and have

not

not refus'd any Thing that may testify my Loyalty.

L. C. J. You Priests have Tricks to evade that.

Prisoner. I never absconded.

L. C. J. What is that to giving a Woman the Sacrament several Times?

Prisoner. I conceive it was no Sacrament unless I was a Priest.

L. C. J. But we know none of you undertake to give the Sacrament in a Wafer, or say Mafs, but a Priest; and you gave the Sacrament in a Wafer to this Woman, therefore you are a Priest.

Jeoffery Robinson was sworn.

He depos'd, He had heard the *Prisoner* say something in a Surplice, in an unknown Tongue, but he cou'd not say what it was.

Jane Robinson was sworn.

L. C. J. Did you ever hear the *Prisoner* say Mafs, or receive the Sacrament?

Jane Robinson. I never saw him do any thing, I only went up and said my Prayers, I took no Notice of any Thing; I don't know him.

L. C. J. Don't you know him neither, *Jeoffery*?

Jeoff. Robinson. Not I, my Lord.

L. C. J. Why, did not you say you saw him in a Surplice, and heard him say something in an unknown Tongue? You have no more Conscience than your Priests allow you.

Ann Robinson. They both took the Sacrament from him when I did.

L. C. J. Did you not receive the Sacrament with *Ann Robinson* at *Mr. Purfal's*?

Jeoff. Robinson. Yes, my Lord.

L. C. J. Who gave it you?

Jeoff. Robinson. I do not know.

L. C. J. He'll say no more than his Wife or his Priest will give him Leave. You see, the Man said at first he was in a Surplice, and said something in an unknown Tongue, and he confesses he receiv'd the Sacrament with this *Ann Robinson*; we cannot expect more positive Evidence from such People: Come, read the Statute.

Then

Then the Statute, 27 Eliz. c. 2. was read, which makes it High Treason for popish Priests to remain in *England*, who were born within the Dominions of this Crown.

Prisoner. I desire it may be observ'd, what *Robinson* and his Wife said before the Justice of Peace, when they were examin'd.

L. C. J. We are to take Notice only of what they say here.

Prisoner. They have said here that they did not know me.

Page 408.
The Chief Justice directs the Jury. That if they believ'd the Prisoner to be a Priest, from the Circumstances, they might find him guilty, tho' there were not two witnesses that swore it positively.

The Chief Justice told the Jury, That they were not to give a Verdict that the Prisoner was a Priest, but, *That they believ'd in their Conscience, upon the whole Evidence, that he was a Priest:* And to induce them to find him guilty, he said, here was one positive Evidence, and another who had sworn he had heard the Prisoner say something in an unknown Tongue, and that he was in a Surplice: And he must leave it to them, whether they would not believe the Testimony of one positive Witness, and the circumstantial Evidence of the other Man, for they saw what Dangers we were in. He left it upon their Consciences, whether they would let Priests escape, who were the very Pests of Church and State, and said they had better be rid of one Priest than three Felons.

The Prisoner is convicted.

Then the Jury withdrew, and having continu'd without some Time, return'd with their Verdict, that the Prisoner was guilty. And the Chief Justice commended the Verdict, and said, he should have found the same himself.

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Vol. II

The TRYAL of WILLIAM ATKINS, before the Lord Chief Justice Scroggs, at Stafford Affizes, the 13th of August, 31. Car. 2. 1679, for High Treason, in receiving Popish Orders, &c.

Page 408.

THE Indictment set forth, That *William Atkins*, late of *Wolverhampton* in the County of *Stafford*, Gent. being born within the Kingdom of *England*, and made and ordain'd a Priest by an Authority deriv'd from the See of *Rome*, did, on the 5th of *December*, in the 30th Year of the King, come and remain within the Kingdom of *England*, (*viz.*) at *Wolverhampton* aforesaid, against the Form of the Statute, the King's Peace, &c.

The Indictment, for being a Subject of *England* he accepted Popish Orders, and afterwards came into *England*,

To which Indictment he pleaded Not Guilty. And the same Jury were charg'd with him as had pass'd upon the the Tryal of *Mr. Bromwich*: Then the Winesses were call'd; and first, *William Jackson* was sworn: Who said, He was present when the Prisoner was apprehended, and bound over to prosecute him, but could depose nothing farther.

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Francis Wilden was sworn. He depos'd, He had heard the Prisoner at Prayers in an unknown Tongue, and he had a Surplice on; and that he had seen him give the Sacrament, after the Way of the Church of *Rome*, to seven or eight People, at *Mrs. Stanford's* at *Wolverhampton*.

Evidence of the Prisoner's exercising his Function.

John Jarvis was sworn. He depos'd, he had heard the Prisoner say something in an unknown Tongue: That he had confes'd to him, and receiv'd the Sacrament of him a great many Times, and he had his Priest's Habit on.

Brown was sworn: And depos'd, He had gone to Confession to him.

Vol. II. Part II. *Dudley*

Dudley depos'd, He had been at Confession, and seen the Prisoner perform several Rites according to the Church of *Rome*.

He makes no Defence, and is convicted.

The Prisoner made no Defence, whereupon the Jury found him *guilty*, and Sentence was pass'd upon him and *Brommich* as Traitors.

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The T R I A L of THOMAS KNOX and JOHN LANE, for a Misdemeanour, in endeavouring to discredit Titus Otes and William Bedloe, two of the King's Witnesses of the Popish Plot; at the King's Bench Bar, the 25th of November, 31. Car. 2. 1679.

The Indictment, for a Misdemeanour, in endeavouring to to defame *Otes* and *Bedloe* the King's Witnesses, and thereby to stifle and obstruct the Discovery of the Popish Plot.

THE Indictment set forth, That *Thomas Knox*, of the Parish of *St. Margaret's Westminster* in the County of *Middlesex*, Labourer; and *John Lane*, of the same Parish and County, Labourer; well knowing that *Otes* and *Bedloe* had given Information against *Coleman*, *Ireland*, and *Grove*, and other false Traitors, who had conspir'd the Destruction of the King, and the Alteration of Religion, and to levy War against the King, and to introduce Popery, &c. and for these Treasons had been convicted, attainted, and executed: And also knowing that the Lords *Powis*, *Stafford*, *Bellasis*, *Arundel*, *Petre*, and Sir *Henry Tuckburn*, were accus'd of the said Treasons, and committed to the Tower; and also were impeach'd by the House of Commons for the same: And that *Thomas Earl of Danby* was also impeach'd of High Treason and other Misdemeanours: They, the said *Knox* and *Lane*, intending to stifle the Discovery of the said Treasons, and to evade the due Course of Law, and the Prosecution of Justice against the said Lords, and Sir *Henry Tuckburn*, did, on the 30th of *April*, in the 31st Year of the King, falsely and maliciously conspire to scandalize and represent the said *Otes* and *Bedloe* as wicked Persons, and Men of

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of no Credit: And the Indictment farther sets forth, That the Defendant, *Knox*, by the Agreement of the said *Lane* and one *Osborn*, did cause several Letters to be written, wherein the said *Otes* and *Bedloe* were accus'd to have conspir'd falsely to charge the said Earl of *Danby*, and that *Otes* was a Person of a vicious Conversation, and wou'd have committed Sodomy upon the Person of the said *Lane*. The better to effect which wicked Designs, the said *Knox* gave several Sums of Money to the said *Lane* and *Osborn*, and offer'd them great Rewards: And this was laid to be against the Duty of their Allegiance, to the Obstruction of Justice, and against the King's Peace, &c.

To which Indictment the Defendants pleaded Not Guilty.

The Jury being sworn, and charg'd with the Prisoners, Mr. *Trenchard* open'd the Indictment: And Mr. Serjeant *Maynard* and Mr. Attorney General shew'd the Nature and Course of the Evidence, and acquainted the Jury that the Question to be try'd by them, was not whether the Lords and others, charg'd with the Treasons mention'd in the Indictment, were guilty of the Plot: But whether the Persons who stood here indicted were guilty of endeavouring to discountenance and suppress the Evidence, and scandalize the Witnesses who were to give Evidence against these Lords; and said, that the endeavouring to withdraw or disgrace the King's Evidence, in any Case, was not lawful, but it was a much greater Offence in Cases of High Treason; and seeing several had been attainted and executed for these Treasons, the Defendants had affronted and disparag'd the Justice of the Nation, which was not to be endur'd.

Then the Records of the Convictions of *Coleman*, &c. were about to be produc'd, but Mr. *Watkins*, of Council for the Defendants, admitted they were attainted, and that *Otes* and *Bedloe* were Witnesses at their Tryals: They also admitted the Impeachments of the Lords in the Tower.

Sir G. L'Eves,
Attorney General.

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Criminal to disgrace the King's
Witness in any
Case.

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The Evidence.

Then Mr. Radford was sworn.

He depos'd, That *Richard Lane*, Father to the Defendant, *John Lane*, was one of the Yeomen of the Guard, as the Deponent also was, and being upon the Guard together about a Twelve-Month ago, *Richard* told the Deponent, that Dr. *Otes* had attempted his Son several Times, in Order to commit Sodomy with him; but he said this *Richard Lane* was counted a very lying Fellow.

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Thomas Allen was sworn.

He depos'd, That *John Lane* being gone out of Dr. *Otes*'s Service, in *December* last he apply'd himself to the Deponent, and desir'd he would intercede for him that he might be admitted into his Service again.

Samuel Otes, Brother to *Titus Otes*, was sworn.

He depos'd, That *Lane* went out of his Brother's Service a second Time in *April* last, and a Fortnight before he went away, as he was talking and jesting with the other Servants, the Deponent heard him say, he did not question, e'er long, to find a Way to get a thousand Pounds—— Then he would have proceeded to have testify'd what *Osborn* had said of his conspiring with the Defendants; but this the Lord Chief Justice said ought not to be admitted as Evidence against the Defendants.

No Evidence ought to be given of what a Fellow-Criminal said, who is not indicted with the Prisoners.

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Mr. Serj. *Maynard*. Tho' it be not direct Evidence to convict the Defendants, yet it will enlighten that Evidence we shall give against them: And *Osborn* is laid in the Indictment, to join with the Defendants in this Conspiracy, but he is run away.

Sir Will. Scroggs.

L. C. J. First prove some Fact against *Knox* and *Lane*, or the Court will direct it is no Evidence.

Sir William Waller was sworn.

Evidence that *Lane* cons'd he was seduc'd by *Knox* to betray his Master *Titus Otes*.

He depos'd, That upon the 29th of *April* last, as he was attending upon the Committee of Lords, who were appointed to enquire into the Plot, there was a Complainr brought before them of *Otes*'s having attempted to commit Sodomy with his two Servants, *Osborn* and *Lane*; whereupon the Lords order'd the Deponent and Mr. *Warcup*, being

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being Justices of Peace, to take the Examinations of *Osborn* and *Lane*; and that *Lane* confess'd, he had been seduc'd by *Knox* to betray his Master, and swear several Things against him, which *Knox* dictated, but *Osborn* writ them over and sign'd them. And that there were some Letters and Informations produc'd by *Lane*, which *Lane* swore were carry'd by *Knox*, and *Osborn*, and himself, to Justice *Cheyney* of *Chelsea*, and that Mr. *Cheyney* refus'd to meddle in it; and they afterwards carry'd them to Mr. *Deny*, and he also refus'd to meddle in it: And that afterward *Knox* took private Lodgings for *Lane* and *Osborn*, that *Otes* might not find them out, and perswaded them to stand firm to what they had said, and they shou'd have a considerable Reward; and that *Knox* dropp'd a Guinea at a Tavern, and said, he wou'd not give it them, because then he cou'd swear safely he never gave them any Money. And *Lane* also depos'd, That *Knox* told him and *Osborn*, that my Lord Treasurer wou'd never have surrender'd himself to the Black Rod, unless they had promis'd to stand fast by the Evidence *Knox* had dictated.

L. C. J. What was the Substance of the Informations that *Lane* produc'd?

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Sir W. Waller. They were to accuse *Otes* of a Design of abusing his Body.

L. C. J. Was *Knox* ever before you.

Sir W. Waller. Yes; and to excuse himself, he said, he receiv'd the Papers from them [*Lane* and *Osborn*] and that they told him they had writ them out, being troubled in their Consciences, and desir'd him to go along with them to a Justice of Peace—— That as they were taking *Lane*'s Examination, *Knox* wrote a Note to him, which was convey'd thro' the Door to *Lane*; the Words were, *We always clubb'd, and you paid two Shillings at the Sugar-Loaf. Tear this.* And that *Lane* confess'd that it was agreed amongst them, that if any one of them shou'd discover, the other two shou'd murder him: And both *Lane* and *Osborn* confess'd, that *Knox* said, the Lords in the Tower wou'd not be wanting

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to acknowledge their Kindness in disparaging the King's Evidence.

L. C. J. Did you ask *Knox* if he dropp'd a Guinea?

Sir *W. Waller*. *Knox* confess'd he dropp'd a Guinea, and also ten Shillings upon the Bed one Morning; but said he lent it them, and they were to repay him again; he also confess'd, that the Papers so drawn up and deliver'd to him had been in the keeping of my Lord *Latimer* for a long Time.

Mr. *Warcup*, the other Justice of Peace, was sworn.

He depos'd, That *Lane*, before the Lords of the Committee, did swear those Things above mention'd against *Otes*. And that the Deponent afterwards heard *Lane*, before the said Committee, beg their Pardon and God's Pardon for what he had sworn, for it was false. That *Knox* own'd his sending up the Note mention'd before, (*Viz.*) *We always clubb'd, and you paid two Shillings at the Sugar Loaf. Tear this.*

L. C. J. This was, that he might not own he had been treated by him.

Mr. *Warcup*. And *Knox* own'd he lay with *Lane* and *Osborn* in several private Places, when there were Warrants for apprehending them, and that he had advis'd them where to lie, and paid for their Lodgings, but said they were to pay him again; but that *Osborn* and *Lane* both swore that *Knox* paid for all, and treated them several Times at the Tavern, and bid them call for what they wou'd and they shou'd have it.

Mr. *Rix*, one of the Yeomen of the Guard, was sworn.

He depos'd, That he help'd *Osborn* into Mr. *Otes*'s Service, but that both he and *Lane* came to the Deponent afterwards, and said they were going away from Mr. *Otes*, and shou'd have Preferment; they were to have 100*l.* a Year, and 500*l.* a piece, and that they were sworn Brothers: That another Time *Osborn* came to the Deponent and told him he was going to dine with one of the greatest Peers of the Realm, and that

that Mr. *Otes* must look to himself, for he had enough against him — That, upon this, the Deponent testify'd this Matter before Justice *Warcup*, and upon some farther Information, the Lords directed Mr. *Warcup* to issue his Warrant for apprehending *Knox*, *Lane*, and *Osborn*, and they were taken; and that *Lane* desir'd the Deponent, when they were in Custody, to go to Sir *William Waller*, and he wou'd make a Confession to him, which he did; and after he had made his Confession, Sir *William* order'd he shou'd not be confin'd so close as the other: That the next Day the Deponent was drinking with *Lane* again, and wou'd have paid the Reckoning, but *Lane* said he shou'd not, for *Knox* had sent him twenty three Shillings t'other Day, which wou'd serve till he got out: That the Nurse of the Prison told him a Gentlewoman, very well dress'd, desir'd her to speak to *Lane* to stand fast, and that *Osborn* and *Knox* wou'd be sure to stand fast, and that they two wou'd be too hard for him, he being but a single Evidence, and that he shou'd not want a Thousand Pounds if he had Occasion for it: And that *Lane* also told the Deponent he had receiv'd a Note much to to the same Effect — That *Lane's* Father and Mother told the Deponent, that my Lord Treasurer wou'd never have surrender'd himself if he had thought *Lane* and the other two wou'd not have stood firm, and if they did not stand firm the Treasurer wou'd lose his Head; and that *Lane* said the same himself — And that *Lane* told the Deponent that *Knox* drew him in, and was the Author of these Papers above mention'd.

Slightam, the Under-Jaylor, was sworn.

He depos'd, That *Knox* gave him three Half-Crowns to carry Notes from the one to the other when they were in Custody, but the Deponent did not carry any: That after *Osborn* had confess'd, *Knox* told the Deponent that wou'd signify nothing, for two were better than one.

Mr. *Dewy* was sworn.

He depos'd, That during the last Parliament, in *April* or *May*, a Message was brought him one

Night by his Servants as he was going to Bed, that one would speak with him from my Lord *Latimer*; but the Deponent sent the Person away and would do no Business that Night; and that a Day or two after *Knox* came to the Deponent with another Gentleman, and brought Papers in his Hand ready written, which he said were Informations of one *Lane* and *Osborn* against Mr. *Otes*; but the Deponent told him, it was unusual to take Informations against a Person who was absent, if he might be found, because he might cross-examine the Witnesses if he were present; and the Deponent dismiss'd them, and refer'd them to the Committee of Secrecy.

Mr. Williams. Pray tell the Substance of those Informations.

Mr. Deny. They charg'd *Otes* with some Crime; and *Knox* said, they repented they had falsely accus'd my Lord Treasurer; I think he said, *Lane* and *Osborn* had overheard Mr. *Otes* and *Bedloe* conspiring against my Lord *Danby*, but I did not look into the Information; and *Knox* said, It was my Lord *Latimer* that directed them to come before the Deponent, which he wonder'd at, because he did not know that Lord.

Henry Wiggins, Servant to *Bedloe*, was sworn.

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He depos'd, That *Knox* and he were together at a Publick-House, where *Knox* desir'd he would get Copies of his Master's Papers, especially what concern'd my Lord Treasurer, and to take a Journal of his Master's Actions, and the Names of those that came to him; for, he said, my Lord Treasurer heard, that my Lord *Shaftsbury* and the Duke of *Buckingham* caball'd with *Bedloe* against him; and he offer'd to carry the Deponent to the Lord Treasurer, who, *Knox* said, would give him Encouragement. And, that *Knox* said farther, that *Otes* and *Bedloe* were two great Rogues, and the King knew them to be so, and when he had heard all he could say, he would hang them.

Mr. Williams. Did *Knox* offer you any Reward?

Wiggins. He did not offer me any Sum, but said, If I was turn'd away upon this Business, I should have any Place in my Lord's Disposal.

L. C. J.

Where Informations are taken against any one by a Justice of Peace, the Party accus'd ought to be present if he may be had.

L. C. J. You never agreed to any Thing?

Wiggins. I told it my Master, and it was discover'd soon after to the Lords.

Mrs. Wiggins, the Mother of *Henry*, was sworn. She depos'd, That *Knox* came to her House and enquir'd for her Son *Henry*, and that by Appointment they met at a Publick-House at *Charing-Cross*, where she was present, and Mr. *Knox* made the above-said Proposal to her Son in her Hearing.

Mr. Serj. *Maynard.* Who came with Mr. *Knox* to you, Mr. *Dewy*?

Page 422.

Mr. *Dewy.* Mr. *Blayden*, who is Steward to my Lord *Danby*, I think.

Then *Slightram* came and depos'd farther, That *Lane* told him in the Gate-House Prison, that he had a Guinea from *Osborne* or *Knox* to swear against Mr. *Otes*.

Mr. *Palmer* was sworn.

He depos'd, That *Wiggins* first told him what Offers had been made him by *Knox*, and he acquainted *Bedloe* with it.

Thomas Dangerfield was sworn.

He depos'd, That he was employ'd by the Lady *Powis* to carry *Lane* Money in the Gate-House, and to solicit for his Liberty; that, particularly, he receiv'd twenty Shillings from Mrs. *Celier* by the Lady *Powis*'s Order, and sent him; that *Knox* desiring *Lane* would write something to signify he continu'd firm, *Lane* wrote a Note to this Effect, That he would die before he would comply with that Villain *Otes*; and if any good People would get him his Liberty, he would do the Catholicks great Service, by discovering what he knew of *Otes*; that this he wrote from the Bottom of his Heart, and should die in it: That the Note was carry'd to the Lady *Powis*, and she and my Lord *Powis* were mightily rejoyc'd at it; and he was told, the Lady *Powis* was the greatest Part of the next Day upon her Knees, giving God Thanks for the great Advantage their Cause had gain'd by it.

L. C. J. What, by gaining a Villain to their Side who swore backwards and forwards?

Danger-

Dangerfield depos'd farther, That after this he receiv'd Money several Times of *Mrs. Celier*, by the Lady *Powis's* Order, towards procuring *Lane's* Liberty, which at length he effected, and brought *Lane* to *Powis's* House; and my Lady order'd that he should go by the Name of *Johnson*, that *Otes* might not discover where he was; and that *Mr. Wood* came from my Lord *Powis*, and directed they should take Care he did not go from the House, for he having equivocated so often they were doubtful of him. — That my Lord *Powis* afterwards thinking it might be a Disadvantage to their Cause, if *Lane* was found at his House, directed him to be sent privately into the Country, which the Deponent took Care to do. — That the Deponent, as soon as he had got *Lane* out of the Gate-House, was employ'd to procure *Knox's* Liberty, but he could not; and that *Knox* has since told the Deponent, that one *Mr. Nevil* had Money from the Lords in the *Tower* to procure his Liberty, which he at length obtain'd. — That, by *Mrs. Celier's* Directions, the Deponent receiv'd several Papers from *Mr. Knox*, which contain'd a Charge against *Mr. Otes*, for attempting to commit Buggery with *Lane*; that these the Deponent sent by *Mrs. Celier* to the Lords in the *Tower*, and from them they were sent to *Mr. Nevil* to enlarge upon, and from him to the Lord *Castlemain* to enlarge upon them, and then they were deliver'd the Deponent again by *Mrs. Celier*, who order'd the Deponent to draw up an Affidavit according to those Directions, and get *Lane* sworn to it, which he did before Sir *James Butler*: That after this, the Deponent had no other Conversation with *Lane*, only he took Care he should have the Ten Shillings a Week that was allow'd him by my Lord *Powis* after he came up to Town again. — That one Day *Knox* told the Deponent, *Osborn* was come over to him, and had given him an Account of his Master *Otes's* Transactions, and that he had taken him before a Justice of Peace, and had made an Affidavit of it, but that *Knox* refused to let the Deponent have a Copy of it at that Time; but that

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that afterwards, at a Coffee-House at *Charing-Cross*, *Knox* shew'd it him, and it contain'd an Account of *Otes's* attempting to commit Sodomy with *Lane*, agreeable to the Affidavit *Lane* himself had made; and that *Knox* said, He should do *Otes's* Business. That the Deponent acquainted the Lady *Powis* with this; who ask'd what Condition *Knox* was in to prosecute this Business, and said, she believ'd the Lord *Danby* must furnish him with Money; but the Deponent acquainting her his Circumstances were very mean, she directed him to furnish *Knox* with Money; and *Knox* a little after applying himself to the Deponent, and telling him, he was in such Distress he must pawn his Sword, the Deponent let him have forty Shillings, and took a Note of him as if he had lent it him himself.

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Evidence that the Lady *Powis* supported *Knox* with Money.

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Then *Knox's* own Information was read, the Purport whereof was, That *Osborn* came to him, told him he was a Servant to *Otes*, and that he had heard his Master *Otes* and *Bedloe* consulting how they might destroy the Lord Treasurer, and that his Conscience would not suffer him to rest till he had reveal'd it; that *Lane* also came to the said *Knox*, and gave him the same Account, and shew'd him several Papers, which were Memorials relating to his Majesty, the Queen, and Lord Treasurer, &c. and they both conjur'd *Knox* to keep this Secret, for they were afraid if this came to the Ears of *Otes* and *Bedloe*, they should be murder'd.

Knox's Information read against him.

A second Information was offer'd to be read, but there being scandalous Matter reflecting upon the King in it, 'twas laid aside.

Mr. *Wishins*, of Council for the Defendant *Knox*, observ'd, That the Indictment consisted of two Parts; the first was, that the Defendants in April last did conspire against *Otes* and *Bedloe* who had discover'd the Popish Plot, to take away their Reputation, and render their Testimony of no Credit; the other Part was, That *Knox* had caus'd Letters to be written as from *Osborne* and *Lane* to him, purporting the Aspersions above-mention'd to be laid upon *Otes* and *Bedloe*. As to the

Page 427.
The Defence made by *Knox's* Council.

That *Knox* was not in the Contrivance, but that the Information was brought him by *Lane* and *Osborn*.

Page 428.

the last Part of the Charge he observ'd, there had been made no manner of Proof of it; and as to the first, he did believe, indeed, that *Osborn* and *Lane* had a Design to disgrace *Otes* and *Bedloe*, and had a Design to draw in his Client *Knox* to countenance their Malice, but that he was not in the Contrivance; for before the Time in *April* when they brought the Papers to him, they had shewn them to several others, that there did not appear any Thing in the whole Evidence that *Knox* himself had sworn against *Mr. Otes* or *Bedloe*, so that there only appear'd a great deal of Weakness in *Knox* in believing such idle Persons, which he hoped would not be thought a great Crime in a young Man who had no Malice or ill Design in it, but apprehending he had met with a Discovery against his Lord's Life, was willing to prosecute the Business.

Frances Lane, Mother of *Lane* the Defendant, was sworn.

Page 429.

She depos'd, That in *March* last her Son told her, his Master *Otes* had used him very uncivilly, and she perswaded him to come away from him; but the Times being hard with her, she afterwards consented to his going to him again; and she hop'd *Mr. Otes* would not have offer'd any such Thing to him any more.

L. C. J. Is this material?

Mr. Scroggs. It shews, that they offer'd at this Discovery before *Knox* was concern'd with them.

Mary Lane, Sister to the Defendant, was sworn.

She depos'd, That *Osborn* brought Papers to their House, concerning the King, and the Queen, and the Lord Treasurer, and concerning *Otes's* Attempts on her Brother.

Mr. Withins. My Lord, we say for *Mr. Knox*, he had no Part in the Malice of the Contrivance, and therefore ought not to be punish'd with them.

Page 430.

The Defence made by *Mr. Holt* of Council with *Lane*.

Mr. Holt being assign'd Council for the Defendant *Lane*, observ'd, That Evidence had been given only of Part of the Charge in the Indictment; and that the Proof not being proportionable to the Charge, his Client ought to be found

Not

Not Guilty, otherwise he might become liable to a severer Punishment than the Crime prov'd would justify.

L. C. J. Tho' all the Facts in the Indictment are not prov'd, yet if there be enough to prove your Contrivance to discredit them, that is sufficient.

Mr. Holt. If the Jury do not find them not guilty generally; may they not find them not guilty of writing the Letters?

L. C. J. No; for if they lay five Things, and prove but one of them, and that tends to the Disparagement of *Otes* and *Bedloe*, which is the Substance of the Indictment, that maintains the Indictment.

L. C. J. Mr. *Williams*, what can you say as to the Transactions of your Client *Knox* with *Dangerfield*? You would have it a Contrivance of *Lane* and *Osborn* between themselves, and that your Client only went with them before a Justice of Peace, hearing something that might affect his Master the Earl of *Danby*, which he believ'd to be true, and so thought he had done but his Duty in it. But what can you say as to his sending that Note, *We all clubb'd together, and you paid two Shillings at the Sugar-Loaf. Tear this?* By which to me he seems to intimate, that he would not own he had spent any Thing upon them, tho' he had been bountiful to them; and then his giving the Man Money to convey Notes, that they might not betray one another; do not these, and the Transactions *Dangerfield* speaks of, imply a Conspiracy. And then *Knox* owns too, that he took those Informations before they were sworn, and carry'd them to my Lord *Latimer*; and that he took Lodgings for *Osborn* and *Lane*, and lay with them when the Lords were in Pursuit of them. What can you say to this?

Mr. *Saunders*. My Lord, Mr. *Dangerfield* himself swears, that *Lane* brought him a Paper containing the same Matter that he did falsely accuse *Otes* of, and he got it sworn before Sir *James Butler*. My Lord, I will put the Cause upon that Point, Whether Mr. *Dangerfield* did not believe it to be true at that Time?

L. C. J.

If several Things are laid in the Indictment, whereby it is alledg'd the Person is defam'd, if any one of the Things be prov'd, the Jury may find the Defendant guilty in general.

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L. C. J. And so you would have it, that as Mr. *Dangerfield* might be deceiv'd into a Belief of the Truth of the Information, so might Mr. *Knox*; but *Dangerfield* has not done those subsequent Acts as *Knox* has done.

Then the Court said, The Case was clear against the Defendants, and they did not see there was any Occasion to sum up the Evidence.

The Defendants
convicted.

Whereupon the Jurors laid their Heads together, and found the Defendants Guilty, without stirring from the Bar. *Then the People gave a great Shout.*

The Defendants being order'd to come into Court, *Knox* desir'd to speak a Word for himself, but the Court would not admit him, and they were taken into Custody.

Page 432.

The TRIAL of LIONEL ANDERSON, alias MUNSON, WILLIAM RUSSEL, alias NAPPER, CHARLES PARRIS, alias PARRY, HENRY STARKEY, JAMES CORKER, WILLIAM MARSHAL, and ALEXANDER LUMSDEN; and the Arraignment of JOSEPH KENRISH for High-Treason, in accepting Popish Orders, and afterwards remaining in the Dominions of this Crown; at the Old-Bayly, the 17th of January, 31 Car. 2. 1679.

Kenrish indicted
and arraign'd for
remaining in
England, having
receiv'd Popish
Orders.

Joseph Kenrish was indicted by the Name of *David Joseph Kenrish*, of *St. Giles's in the Fields*, in the County of *Middlesex*, Clerk; for that he being born within the King's Dominions, and being made and ordain'd a Priest by an Authority deriv'd from the See of *Rome*, after the 1st Year of Queen *Elizabeth*, and before the 15th of *November*, in the 30th Year of the present King, did traitorously remain and abide in the said Parish of *St. Giles's* in the County aforesaid, contrary

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trary to the Form of the Statute in that Case made and provided.

To which Indictment he pleaded Not Guilty; but being very ill, the Court directed he should be carry'd back to Prison till he was recover'd.

But being sick, was remanded to Prison.

Then the rest were arraign'd, being severally indicted on the aforesaid Statute, for remaining in *England*, having receiv'd Priests Orders from *Rome*: And to their several Indictments respectively pleaded Not Guilty; only *Marshall* and *Corker* objected, they were try'd for High-Treason before and acquitted, and therefore they thought they could not be try'd again for Treason: But they were told, that was for being in the Plot, and this was for being Priests and remaining in *England*, which was another Species of Treason. Then *Marshall* said, That being a Priest alone was not Treason by the Statute, and desir'd Council to argue that Point of Law; but the Court told him he must plead first; and accordingly *Marshall* and *Corker* pleaded Not Guilty, as well as the others.

Page 433.

Anderson, &c. indicted also for accepting Popish Orders, &c.

Marshall and *Corker* object, they had been already try'd for Treason and acquitted; but are told, that was for compassing the King's Death, &c. which is another Species of Treason.

The Jurors being call'd, the Prisoners did not challenge any of them, and the first Twelve were sworn. And *Anderson* was set to the Bar, and the Jury were charg'd with him.

Page 434.

Mr. Belwood having open'd the Indictment against *Anderson*; *Anderson* said, As to the Crime of staying in *England* with which he was charg'd, he said by the King's express Command, and had an Order for it from the Council-Board; but the Lord Chief Justice acquainted him, if he had such an Order he must apply himself elsewhere, their Business was to try whether he had offended against the Statute whereon he was indicted.

Anderson first try'd.

The King's Order for his staying in *England* will not avail him here.

Sir John Keyling observ'd, That this Statute was made above a hundred Years ago, on Account of the many Attempts the Popish Priests had made to seduce the People, and incite Rebellions against the Government; that it was true, thro' the Lenity of our Princes, the Statute had lain dormant almost ever since; but the Occasion being reviv'd at this Time, for the remedying of which

which that Statute was principally made, (*viz* their raising Seditions and Rebellions against the Government) the present Prosecution was thought necessary.

Page 435.

One who accepts
Popish Orders,
owns a foreign
Authority and
rejects his Sovereign's.

Mr. Serj. *Strade* added, That it was not purely his Priesthood which was the Crime he was try'd for, but that having receiv'd Orders from the See of *Rome*, he did remain here contrary to the Statute, and for that he own'd a foreign Authority, and rejected his Sovereign's.

Then the King's Witnesses were call'd, and first, Mr. *Dangerfield* was sworn.

Dangerfield deposes, that he went to Confession to *Anderson*.

Dangerfield deposes, That in *May* or *June* last, when he was Prisoner for Debt in the King's Bench, Mr. *Anderson* took him in private, and shew'd him a Letter from the Lady *Powis*, wherein she told *Anderson*, He must advise *Willoughby* [*i. e.* *Dangerfield*] to scower his Kettle; by which was meant, that the Deponent should confess and receive the Sacrament to be true to the Cause; and that accordingly the next Day, being *Sunday*, the Deponent went to *Anderson* to Confession, and receiv'd Absolution; and he sent the Deponent to another, who was saying Mass at that Time, to receive the Sacrament; and afterwards the Deponent return'd to *Anderson* again, and he gave him a Toleration to go and be drunk with one *Strade*; and the Deponent asking, If he might lawfully do it just after receiving the Sacrament? *Anderson* said, Yes; and that he gave him Authority so to do, it being for the Good of the Cause: For the Deponent was employ'd by the Catholicks to endeavour to bring over *Strade* to be a Witness for the Lords in the Tower, and to invalidate *Bedloe's* Testimony.

Deposes, he had an Indulgence from *Anderson* to be drunk as soon as he had receiv'd the Sacrament.

Anderson. Here I am upon my Life and Death; and I wish that all the Punishments of Hell and Damnation may come upon me, if ever I open'd my Mouth to this Rogue about any such Business.

Sir W. Serjeant,
Lord Ch. Justice.

L. C. J. We must not suffer this Language; let us have that Respect shewn us that is fitting, and so shall you; If you will ask him any Questions you may.

Anderson.

Anderson. If *Dangerfield* and I was so well acquainted, some Body must have seen us talk together one Time or other ; now, if he can produce any one Person that can testify he saw me speak to him, I will be hang'd and say no more.

Mr. J. Atkins. He need not bring Witnesses to that ; he swears the first against you positively.

Anderson. But, my Lord, the Witnesses should be creditable People ; and this Man has been pillory'd twice, broke Prison once, and committed other heinous Offences ; and I can produce that worthy Gentleman, *Mr. Mansel*, as a Witness, whose Blood that Villain design'd to have shed ; but upon the Colonel's urging his having been set in the Pillory, tho' *Dangerfield* then bore that magnificent Title of the *King's Evidence* as he does now, the Colonel was set at Liberty.

L. C. J. If you have not the Record here, this won't avail you.

Mr. Otes was sworn.

Mr. Serj. Stode. Dr. *Otes*, will you tell your Knowledge of this Matter ?

Otes. He is a Priest, I have heard him say Mass.

Anderson. 'Tis true, I have said Mass, but that is no Proof of my being a Priest ; for the Law makes a Difference, and only sets a Pecuniary Mult of 200 Marks, and a Year's Imprisonment upon one that says Mass.

Otes. My Lord, I have been at Confession with him, seen him consecrate the Sacrament, and have seen his Priest's Orders. He is a *Dominican* Fryar.

Anderson. Can you prove that I receiv'd Orders from the See of *Rome* ?

L. C. J. If you mean that this Statute should never have any Effect, or a Priest be convicted on it, unless we can produce Witnesses that saw him take Orders, then indeed you might avoid the Statute : But when it is plainly prov'd that you have done those Acts that none but a Priest are allow'd to do, it must convince all the World, that this Issue, whether you are a Priest or not, is well prov'd.

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K

Otes.

Page 436.
Dangerfield's Testimony objected to, having been in the Pillory, the Record of his Conviction not being produc'd, he is held a legal Evidence.

Otes's Evidence, that the Prisoner perform'd the Function of a Priest, and it is not necessary to prove his Ordination.

Otes. He confess'd to me he had Orders from Rome.

Page 437.

Anderson. How comes it to pass, that I did not come here in a yellow Coat : I ought to be arraign'd for a Fool rather than a Traitor if I told him so. — Does he know me to be an *Englishman* too?

Otes. You said you were an *Englishman*, and the Son of an *English* Gentleman.

Bedloe was sworn.

Bedloe appears
perjur'd in his
Evidence against
Anderson.

Bedloe. He is a Priest and an *Englishman*, Son of Mr. *Anderson*, a Gentleman of 2 or 300 l. a Year in *Oxfordshire*. I know him and his Father very well.

Anderson. Was I guilty of being acquainted with so great a Rogue as this Fellow, I would have been my own Executioner, and not expected my Sentence here : My Father has the Honour of being well known to my Lord Chief Baron, who knows this to be false.

L. C. Baron. Mr. *Bedloe*, he is a Gentleman's Son of Quality in *Lincolnshire*.

Anderson. And yet this Rogue can say this upon Oath ; but, indeed, his whole Life has been full of such Mistakes.

Bedloe. My Lord Privy-Seal's Nephew told me so.

L. C. J. Have you heard him say Mass?

Bedloe. I have seen him administer the Sacrament in his Priest's Habit ; I think it was at the *Venetian* Ambassadors ; but I'm sure 'twas in some of the Ambassadors Houses.

Prance was sworn.

He depos'd, He had seen him say Mass several times at *Wildhouse*, and give the Sacrament to a whole Rail full of People, and had seen him take Confessions.

The Prisoner says
he wrote in De-
fence of the
King's Power a-
gainst the Pope's
Supremacy.

Page 438.

Anderson. I can prove I never did say Mass at *Wildhouse*, or went to the Chapel ; for some would have had me excommunicated, for writing for the King's temporal Jurisdiction over all his Subjects independant of the Pope, as appears by a Letter from the Bishop of *London* on my Behalf to Sir *Clement Armiger*. I am well known to most of

of the dignify'd Clergy in *England*; I won't deny I have said Mass, but I am confident I have not said Mass in any Popish Church these ten Years: I wou'd not tell a Lie to save my Life, or to take away the Life of the greatest Villain upon Earth: no, not of that Rogue [*pointing to Dangerfield*]: But I protest, my Lord, there is not one Word that has been sworn against me true, unless what *Otes* says concerning my saying Mass. And, my Lord, I can prove it to your Lordship by Authority, that it was the Opinion of all the Judges about nine Years ago, deliver'd to the King and Council, upon a Question about the Laws concerning Popish Recusants, that this Law was only made *in terrorem*.

Says, the Judges had deliver'd their Opinions, that this Law was made only in terrorem.

Mr. J. *Pemberton*. You must not be permitted to talk thus.

Mr. J. *Dolben*. Will you arraign the Judges here?

L. C. J. 'Tis very true, our Kings have not put this Statute in Execution with Rigour, till you your selves gave Occasion for it; but now 'tis necessary, for the Preservation of the King's Life, against which your Contrivances are so bent.

Mr. J. *Pemberton*. You must employ your Time otherwise if you intend to be heard.

Anderson. Then I desire these Things may be prov'd, 1. That I am an *Englishman*: 2. That I took Orders from *Rome*: And 3. That I did abide here contrary to the Statute; for this being a Penal Law, the Facts ought to be prov'd positively, and the Person accus'd is not to be presum'd guilty from Circumstances.

L. C. J. You have prov'd the first your self in your Appeal to my Lord Chief Baron.

Mr. J. *Ellis*. And, I think, you do not deny that you are a Priest.

Anderson. But, my Lord, I having given several Testimonies of my Loyalty and Obedience to the Government, I desire your Lordship will please to stay till you know the King's Pleasure.

L. C. J. We are to try the Fact, whether you are a Priest or no; and I may appeal to your own

The TRIAL of

Conscience, whether this has not been evidently prov'd to the Satisfaction of all Mankind.

Anderson. But 'tis all by Presumption still.

The Ch. Justice directs the Jury.

One born of English Parents, and speaking English, shall be presum'd to be born in the King's Dominions, unless the contrary be prov'd.

Then his Lordship directed the Jury, and said, 'Twas true, some kind of Evidence there ought to be given of his being an *Englishman*; and here they heard him speak the Language, and acknowledge himself to be born of *English* Parents, and then he ought to be presum'd an *Englishman*, unless he brought Proof of his being born beyond Sea; and as to his being a Priest, his performing the Offices of a Priest, as had been prov'd, was sufficient Evidence of that.

Anderson. The Clerk does at Mass give Absolution.

The Clerk absolves the Priest at Mass.

Otes. My Lord, the Clerk who serves at Mass, gives, *pro forma*, Absolution to the Priest, without which the Priest cannot approach to the Altar; so, after the Priest hath made a general Confession for the whole Congregation, the Clerk absolves the Priest, that he may absolve the Congregation.

L. C. J. Well, the Fact is plain, and we must never expect to convict a Priest upon this Statute, if such Proof is not sufficient.

Mr Corker's Trial.

Then Mr. *Corker* was set to the Bar, and the Jury charg'd with him; and Mr. *Belwood* having open'd the Indictment, the Witnesses were call'd, and first, Mr. *Otes*.

He is Titular Bishop of London.

He depos'd, That *Corker* was a Benedictine Monk, and one of the Queen's Priests, and he had heard him say Mass at *Somerset-House* and at the *Savoy*; and had seen his Patent to be Bishop of *London*.

Page 440.

Mr. *Bedloe* was call'd.

A Convent in the Savoy suppress'd.

He depos'd, That before the suppressing the Convent in the *Savoy*, he had seen *Corker* wear the Habit of a Benedictine Monk, and he had seen several People Confessing to him, and he gave them Absolution at *Somerset-House* Chapel.

Prance was call'd.

He depos'd, That he had seen *Corker* say Mass at Mr. *Palton's* in *Duke-street*.

L. C. J. What do you say for your self.

Corker.

Corker. I do protest before God and the Court, I never said Mafs or heard Confessions at *Somerſet-Houſe Chapel*, or at *Mr. Paſſon's* in *Duke-ſtreet*. And as to my being in the *Savoy*, as my Denyal will not clear me of it, ſo I beg I may not be my own Accuſer.

L. C. J. Gentlemen of the Jury, you have it prov'd by three Witneſſes, that he hath ſaid Maſs, receiv'd Confessions, and deliver'd the Sacrament, and you have heard what Order he is of.

Then *Mr. Maſhal* was ſet to the Bar, and *Mr. Belwood* having open'd the Indictment, *Otes* was ſworn again, and depos'd, That he had heard *Maſhal* ſay Maſs a dozen times within three Years, and that he had ſeen him conſecrate the Hoſt, and give the Sacrament. Page 441.
Mr. Maſhal's
Tryal.

Maſhal. Unleſs he names the Day, how is it poſſible to diſprove him.

L. C. J. It is an improper Queſtion that you aſk.

Mr. J. Pemberton. He is not bound to name the Day.

Otes. I will pitch upon a Time; I heard him ſeveral times laſt Summer was Twelve-Month, and ſeveral times the Winter before.

Bedloe was ſworn, and depos'd, That he had ſeen *Maſhal* in the Habit of a Benedictine Monk in the *Savoy*, but he never ſaw him execute any Part of the Office of a Prieſt.

L. C. J. If you have any Thing to ſay for your ſelf, pray ſpeak.

Maſhal. If there be but one Witneſs, I need make no Defence.

Sir John Keyling. Then ſwear *Mr. Prance*. [which was done.] What did you hear *Maſhal* ſay at his laſt Tryal?

L. C. J. This is hard Evidence truly.

Prance. I heard him ſay to *Corker* at that Tryal, Tho' we are Prieſts this does not reach us.

L. C. J. But is this good Evidence?

Prance. I did hear him ſay he was a Prieſt.

Mr. J. Pemberton. We did all hear him ſay ſo, I believe.

His Confession, that he was a Priest when he was try'd for the Popish Plot, brought as Evidence against him.

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Marshal. If a Man do confess at another Time without other Proof, that will not do.

L. C. J. Don't be over confident of that.

Mr. J. Ellis. If he has confess'd it, sure that is Proof enough.

Dugdale also was sworn again, and depos'd, that to the best of his Remembrance he heard *Marshal* own he was a Priest.

Marshal. If I did say so, it must be to the Court, and then it must be upon some Question ask'd me.

L. C. J. If you appeal to the Court, I'm afraid it will do you no Good.

Marshal. If *Mr. Otes* heard me say Mass that Summer he speaks of, it must be either in *June*, *July*, or *August*.

L. C. J. *Mr. Otes*, when did you first hear him say Mass?

Otes. In the Year 1677, before I went to *Spain*.

Marshal. He says, he was reconcil'd to the Church of *Rome* but a little before he went.

Otes. I was reconcil'd on *Wednesday*, and I went in *April* following.

Marshal. Well, the only material Witnesses against me now, was a Witness against me at my last Tryal; now I conceive, I being found Not Guilty at the last Tryal, that Witness ought to be look'd upon as perjur'd.

L. C. J. A Witness may swear true, tho' the Jury don't believe him.

Marshal. I ground it upon what my Lord *Jones* said at *Coleman's* Tryal when the Jury were going out, That either they must find him guilty, or bring in the two Witnesses perjur'd.

Mr. J. Jones. There were two positive Witnesses, and nothing to contradict them.

Marshal. *Otes's* Testimony being found false last Time, should make him of no Credit now.

Mr. J. Dolben. The Jury are to take no Notice of that, unless you bring a Record of his Conviction.

Then the Chief Justice having summ'd up the Evidence against *Marshal*, *William Russel* was set to the Bar.

Otes

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One seen'd of
Perjury a legal
Evidence till the
Record of his
Conviction is
produc'd.

Otes was sworn again.

He depos'd, That *Ruffel* was a Franciscan Fryar, and used to go by the Name of *Napper*; and that he had heard him sing Mass twenty Times, particularly at *Wildbouse*; that he heard him in November 1677, and several Times last Summer was Twelve-Month; and that he had receiv'd the Sacrament from him himself.

M. *Ruffel's* Trial.

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Prance was sworn.

He depos'd, That he heard *Ruffel* say Mass twenty Times in his Habit, and give the Sacrament, and take Confessions, particularly at the *Spanish* Ambassadors at *Wildkouse* about two or three Years ago.

Sir *William Waller* was sworn.

He depos'd, That he took *Ruffel* in his Room, and he found several Religious Habits among his Cloaths, and he own'd them to be his.

The Prisoner having nothing to say to this Evidence, the Chief Justice told the Jury, it was a plain Case; and *Charles Parris*, alias *Parry*, was set to the Bar, and the Jury were charg'd with him.

Otes and *Bedloe* complain'd, the Court was full of Papists, who came to take Advantages of what was said: But the Chief Justice said, He would not put them out, it should not be said but what they did was openly and fairly.

Otes and *Bedloe* complain, the Court was crowded with Papists.

Otes and *Prance* were sworn again.

Otes depos'd, That he had heard *Parry* say Mass several Times, particularly at *Wildbouse* and at Mr. *Passon's*, in the Years 77 and 78, and that he had seen him consecrate the Host, and give the Sacrament.

Parry's Trial.

Parry. What Month of 78, I desire to know?

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Otes. I cannot confine myself to a Month; but you went by the Name of *Johnson*, and I am sure this is the Man.

Parry. I never went by any other Name than *Parry*.

Prance depos'd also, That *Parry* went by the Name of *Johnson*, and that he had heard him say Mass at the *Venetian* Ambassador's, and at Mr. *Passon's*, and had seen him give the Sacrament

about half a Year before the Plot; and he knew him by another Circumstance, that he brought a Chalice to his House whole, and broke it there, and told the Deponent he must not touch it till 'twas broke, and so he defac'd it.

Parry. I never did any such Thing, or ever bought or sold to him any Chalice, nor was I ever in my Life at the *Venetian* Ambassador's, or at *Wildhouse*: And for six or seven Months before the Plot, which is the Time *Prance* speaks of, I was in the Country.

Prance. I am not certain as to the Time, but it was either about two Years or two Years and a half ago as I believe.

Mr. J. Pemberton. He is not positive, nor can be in it.

Parry. I have Witnesses to prove how long I was in the Country before the Plot: Now he only believes it, but before he swore it positively:

L. C. J. Mr. *Prance*, are you sure this is the Man?

Prance. Yes, I heard him confess he was a Priest.

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Landscroon, a Painter of *Windsor*, was call'd as a Witness by the Prisoner.

He depos'd, That Mr. *Parry* was at *Windsor*, and never came to *London* from *Christmas* 77, to *Allhallantide* 78.

Jacob, another Witness for the Prisoner, was call'd.

He depos'd, That he went down with Mr. *Parry*, in the Coach, to *Windsor*, about ten Days before *Christmas*, 77, and he staid there a Year for his Health, and they din'd every Day together.

L. C. J. The Testimony of Mr. *Otes* goes to *November*, and they speak to the *Christmas* following.

The Venetian Ambassador's Letter not admitted to be read as Evidence for the Prisoner.

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Parry. My Lord, Mr. *Otes* says he heard me say Mass at *Wildhouse*; here is a Letter of the Ambassador's, who, upon the Examination of his Family, testifies that I did never officiate in his Family.

L. C. J. That cannot be read: Why do not you bring Witnesses?

Parry.

Parry. There is but one of the Ambassador's Family remaining in *England*, and he is here.

Monfieur Rivier appear'd.

Parry. He liv'd in the House, and knows that by his Master's Order all his Domesticks were examin'd, and they protested they never knew me or ever saw me in *Wildhouse*, all which I have under the Ambassador's Hand and Seal to shew.

L.C. J. It signifies nothing, here are some that have heard you say *Mafs* if he has not.

Then *Rivier* depos'd, That he did not know that ever *Parry* said *Mafs* at *Wildhouse*, and that he never saw him there.

Mr. J. Pemberton. If you ask a hundred here they would say the same Thing.

Then the Chief Justice said, The Matter was plainly prov'd by two Witnesses, and if the Jury believ'd them they must find him guilty: After which the Chief Justice went off the Bench, and *Henry Starkey* was set to the Bar, and the Jury were charg'd with him.

Starkey's Tryal.

Otes was sworn again.

He depos'd, That he heard *Mr. Starkey* say *Mafs* at *Mr. Paston's* about three Years ago, and that he saw him consecrate the Host, and receive the Sacrament in both Kinds, and he was in a Priest's Habit.

Starkey. What are a Priest's Habits, Sir?

Otes. Why he had a Thing on about his Neck and a Surplice, and a Thing about his Arm. He had a Surplice girt about him.

Starkey. I perceive you neither know a Priest's Habit, nor the Difference between his Habit and his Ornaments; his Habit is a Cassock down to the Ground, and a Side Cloak; the Ornaments are not a Surplice, as he says, but an Albe that falls to the Ground, and other Things besides that: And how can he tell that I said *Mafs*? Does he know that I took Orders; for if I was not in Orders, it was no *Mafs*; for it is the Priest makes the *Mafs* and not the *Mafs* the Priest.

He shews that *Otes* did not know what a Priest's Habit was.

Obj. That the Priest makes the *Mafs*, and not the *Mafs* the Priest.

Mr. J. Pemberton. That's a pretty Argument, why, do any but Priests say *Mafs*?

Starkey.

That a Protestant
had said Mass a-
bout Town.

Page 450.

Starkey. I knew a Lay Man, a Protestant, who said Mass about this Town, and at last he stole the Chalice; his Name was *Gardener*.

Mr. Prance was sworn.

He depos'd, That he heard *Starkey* say Mass at the Lady *Somerset's* in *Lincoln's-Inn-Fields*, and at *Mr. Duncombe's* in *Princes Street*.

Starkey. I was never there in all my Life.

Prance. I have heard him say he has said Mass in the King's Army.

Says he had spent
4000 l. and lost a
Leg in the King's
Service.

Starkey. I never did; but I appear'd for the King when he had not above 500 Men in Appearance for him, and have spent above 4000 l. in the King's Service, and lost a Leg by a Cannon Shot, and when I receiv'd my Sentence of Banishment, had but three Half Crowns left in the World.

L. C. J. Baron. Whatever you have merited by your Service, you had best apply your self to the King for his Mercy; but it is nothing to the Point to be try'd before the Jury.

That he was ho-
stid at the Time
of the Usurpation
for refusing to
take the Engage-
ment against the
King.

Starkey. I was banish'd into *France* fourteen Years, because I refus'd to take the Engagement never to bear Arms for the King; and I have discover'd a Plot against the King's Life.

Mr. J. Pemberton. We are only to try whether you are a Priest or not.

Then the Lord Chief Baron told the Jury there were two Witnesses against the Prisoner, and if they believ'd them, they ought to find him guilty.

*Mr. Lumsden's
Trial.*

Alexander Lumsden was set to the Bar, and the Jury charg'd with him, and *Otes*, *Dugdale*, and *Prance* were sworn again.

Otes depos'd, That *Lumsden* was a Dominican Fryer, and he had heard him say Mass twenty Times at *Wildbouse*, and seen him consecrate the Host, give the Sacrament, and take Confessions, the Summer before the Plot broke out.

He appears to be
a Scotchman, and
Procurator for
Scotland.

Prance depos'd also, That he had heard *Lumsden* say Mass twenty Times, and that he thought he was an *Irishman*; but *Otes* said he was a *Scotchman* and Procurator General of the Kingdom of *Scotland*; and *Lumsden* acknowledg'd he was of *Aberdeen* in *Scotland*.

Dugdale.

Dugdale depos'd, He heard *Lumsden* confess he was a Priest and a Dominican Fryer.

Lumsden. Here is only bare Assertions and nothing prov'd.

L. C. Baron. Do you think there can be no Proof of your being a Priest, unless the Witnesses saw you receive Orders.

Ores. I have heard him own him'self a Priest twenty Times.

Lumsden. The exercising the Office of a Priest is but a Penalty of 200 Marks.

L. C. Baron. Ay, if the King will go no higher; but you are prosecuted on another Statute.

Then the Lord Chief Baron directed the Jury: And told them there was no Necessity they should have Proof of a Priest's Ordination, but when it was prov'd he had exercis'd the Office of Priest, it was sufficient Evidence for them to find him guilty; but that Mr. *Lumsden*'s Case differ'd from the rest, in that he was found to be a *Scotchman*, and the Court were in doubt whether he came within the Statute, for the Words being, *Within the King's Dominions*, they question'd whether they extended to a Native of *Scotland*, which was not under the Dominion of the King of *England* at the making of the Statute; and therefore directed them to find a special Verdict as to him.

The Jury withdrawing, return'd again in about a quarter of an Hour, and brought in the first six Guilty, and as to *Lumsden* they found he was a Priest, and that he was remaining in *England*, as in the Indictment, but that he was born at *Aberdeen* in *Scotland*, and whether he was guilty of High Treason they crav'd the Opinion of the Court.

Then the Judges went off the Bench, and left Mr. Recorder to pronounce Sentence, and the Prisoners being all set to the Bar, except *Lumsden*, it was demanded of them respectively what they could say why Judgment of Death should not pass upon them according to Law; and the Prisoners offering nothing in Arrest of Judgment but what they had insisted on at their several Tryals, the Recorder made a Speech to them; wherein he told

Page 457.

The King may prosecute either on the Statute which gives a Forfeiture of 200 Marks for saying Mass, or upon the Statute which makes the taking Orders Treason.

The six first convicted, but *Lumsden* being a *Scotchman*, it was found, specially as to him, the Court doubting whether he was within the Statute.

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Sir George Jeffries Recorder.

Page 455.

The Recorder
shews the Reason-
ableness of mak-
ing this Statute,
and the putting
it in Force at that
Time.

told the Prisoners, That neither the Law it self, on which they were convicted, nor the putting it in Execution at this Time, were unreasonable: That the King ought to be acknowledg'd the Supreme Head and Governour in his Dominions, and such Persons as were for transferring their Allegiance to a Foreigner, and giving him a Power to depose the King and dispose of his Dominions, (as every one did who accepted Orders from the See of *Rome*) must be thought to deserve the greatest Punishment: And if Care were not taken of those who profess these Principles, and preach such Doctrine, we shou'd soon see an End of our Government and Religion too: And inasmuch as they were now endeavouring to put these Doctrines in Practice, there cou'd be no Reason alledg'd, but as the Occasion of making the Law was reviv'd, so the Execution of the Law shou'd revive with it.

Sentence pass'd
on the first six.

After he had ended his Speech, he pronounc'd Sentence on them as Traytors.

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*The TRYAL of JOHN TASBOROUGH
and ANNE PRICE, for Subornation of
Perjury at the King's Bench Bar, the
3d of February, 32. Car. 2. 1679.*

AN Indictment having been found the last Term against the Defendants, they this Day appear'd in Court in Order to their Tryal, and a Jury was sworn, and the Indictment read over to them.

The Indictment
for Subornation
of Perjury.
Page 457.

The Indictment sets forth, That whereas *Thomas Whitebread, William Harcourt*, and others, had been indicted for High Treason, in conspiring the Death of the King, &c. and were convicted and attainted for the same. And whereas *Richard Langborn, Esq;* had been likewise convicted and attainted of the same Treasons; and that upon the aforesaid Tryals *Stephen Dugdale* had been examin'd as a Witness for the King, and had depos'd materially against the said Traytors; the Defendants

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Defendants intending to stifle the Discovery of the said Treasons, did, before the Tryal of the said *Harcourt*, (*viz.*) the 10th Day of *June* in the 31st Year of the King, at the Parish of *St. Margaret's Westminster* in the County of *Middlesex*, solicit, suborn, and endeavour to perswade the said *Stephen Dugdale* not to be a Witness, or to give Evidence upon the said Tryal. And after the Tryal of the said *Harcourt*, *viz.* on the 12th Day of *October*, in the 31st Year aforesaid, at the Parish of *St. Margaret's* aforesaid, the said Defendants did farther solicit the said *Dugdale* to retract and deny all the Evidence he had given, and did promise him large Sums of Money to induce him to do it: And to accomplish this, they did perswade him to withdraw himself, and produc'd a Note for him to sign, importing that he had sworn falsely against the Catholics, and knowing he had many powerful Enemies, he had withdrawn himself to a Place of Safety, in Order to make a full Discovery, &c. And that to induce him to sign this Note, they had promis'd him many great Rewards: And this was laid to be done falsely, advisedly, and corruptly, to the evil Example of others, against the Duty of their Allegiance, the King's Peace, &c.

The Indictment being read, Mr. *Roger Belwood* and Mr. Serjeant *Maynard* open'd the Charge, and Mr. Attorney General open'd the Evidence.

Page 458:
Sir Cr. Levin,
Attorney General.

Then a Copy of the Record of the Conviction of *Whitebread*, &c. was produc'd, and Mr. *Clare* was sworn, and depos'd, That he examin'd it with Mr. *Alderly*, Clerk of the Peace of *Middlesex*, and that it was a true Copy; and a Copy of *Langhorn's* Conviction was produc'd also, and Mr. *Clare* depos'd, That he examin'd it with Mr. *Tanner*, the Clerk of the Peace of *London*, and it was a true Copy. After which

Page 459.
Records of the
Jesuits and *Langhorn's*
Conviction produc'd in Evidence.

Stephen Dugdale was sworn.

He depos'd, That the Defendant, Mrs. *Price*, having been a Servant with him in my Lord *Allen's* Family, he sent for her, being an old Acquaintance, when he came up to *London* as a Witness for the King, and they us'd to converse much together,

Dugdale's Evidence of Mrs. *Price's* soliciting him to retract his Evidence.

together; and that in *June* last, the Night before *Harcourt's* Tryal, she wou'd have perswaded him not to give Evidence against Mr. *Harcourt*, because he was her ghostly Father, and that one *Wright* was by and heard her; but the Deponent told her he cou'd not help it, he was to give his Evidence the next Morning, and that he did not see her again a pretty while: That afterwards she was reconcil'd to him, and desir'd the Deponent to speak to the Chief Justice in the Behalf of one *Parsons*, to get him bail'd out of the *Gate-House*, but that he went into *Staffordshire*, where he continu'd about six Weeks, and coming to Town again about the 11th of *September*, Mrs. *Price* came to him again, and ask'd him if he had done any thing in *Parsons's* Business: He said, No, but he wou'd go about it immediately; and she reply'd, You need not now, for we have a greater Work in Hand: That she said, she came from a great Person, and if he wou'd retract his Evidence and go beyond Sea, [to *Flanders*] he shou'd have a thousand Pounds, paid into a Merchant's Hands to be secur'd till he came back, to give Evidence for them, and that he was to take the Plot off from the Catholicks and throw it upon the Protestants, and do some other considerable Services: That the next Time she came to him, he ask'd her who the great Person was she came from, and she said from the Duke of *York*: That the Deponent then went to the Lord *Shaftsbury*, President of the Council, and to Mr. *Hambden*, and acquainted them with it, and they directed him to go on a little farther with her, and endeavour to trepan her, and discover the whole Design; and accordingly he did give her Encouragement, and got Dr. *Chamberlain* and his Clerk conceal'd in a Place near where they discours'd these Matters, and when he had plac'd them, he ask'd Mrs. *Price* who first intimated this Matter, and she said that she did, and he did, by the Questions he propos'd, make her repeat the Substance of all that had pass'd between them in the Hearing of Dr. *Chamberlain* and his Clerk.

L. C. J. When did Mr. *Tasborough* first appear in *Sir Will. Scriven* this Matter?

Dugdale. He never appear'd but twice, and the first Time I think was about the 12th of *October*, being about the Time the Duke came from *Flanders*, and he said that Mrs. *Price* had acquainted him that I wou'd come over to them; and I gave him some Encouragement to think so; and he said he came there to confirm what Mrs. *Price* had promis'd me, and that he came from the Duke, and what she had promis'd shou'd certainly be made good, and I shou'd have the Duke's Protection; and said, if I did come over to them, it was a very charitable Act, and much like a Christian, and if I had done amiss I might have Pardon for it. And he gave me this Encouragement to induce me to come over to them and retract my Evidence, and they produc'd the Note for me to sign, which is mention'd in the Indictment, and Mr. *Tasborough* read it, and said it was nothing but what I might lawfully do: And Mrs. *Price*, upon my Importunity, left the Note with me, and I gave it to Dr. *Chamberlain* to copy: And afterwards I met Mr. *Tasborough* and Mrs. *Price* at the *Cans* in *Holbourn*, and they told me that was the last Time they wou'd meet me, and if I did not sign the Note then, it wou'd be much to my Prejudice, and they shou'd not be able to do any Thing for me unless I sign'd it before the Duke went to *Scotland*: Mrs. *Price* produc'd the Note, and laid it upon the Table at our second Meeting, for I had return'd it to her again before we met; ——— I forgot to acquaint the Court that once Mrs. *Price* pretended to go to the Duke at *Windfor* about this Business, and to get me my Pardon, and said that the Duke wou'd protect me, &c. and that he directed I shou'd apply my self to the *Spanish* Ambassador, and he wou'd write Letters into *Flanders* for me; but I cou'd never find, tho' they made Use of the Duke of *York*'s Name, that he countenanc'd the Matter, or ever knew of it.

Dugdale's Evidence of Tasborough's tampering with him.

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L. C. J. Be-

The TRIAL of

L. C. J. Before you saw *Tasborough* Mrs. *Price* talk'd of going down to *Windsor* and getting your Pardon?

Mr. *Dugdale*. Yes, my Lord; for I made some Scruple about it, and she said a Man of great Quality shou'd engage for the Performance: And they told me, before the Duke wou'd believe me real, I must subscribe the Note; and the 1000 l. was prepar'd for me, and I shou'd go to *Flanders*, and be maintain'd and protected there: But I objecting my Fears of the *Spanish* Inquisition, Mrs. *Price* ask'd me if I cou'd not be content to be in a Protestant Earl's House, and not go beyond Sea.

Mr. *Belwood*. Pray, What Discourse had you with *Tasborough* about Sir *George Wakeman's* Tryal?

Dugdale. At the second Meeting, says Mr. *Tasborough*, What a Progress has been made by the acquitting of Sir *George Wakeman*, infomuch that the Protestants themselves are at a Stand, whether there was a Plot or no, and if you come over to us it will overthrow all: As for *Otes*, *Bedloe*, and *France*, they said they cou'd soon do their Business if I wou'd but come over.

Then a Copy of the Note, mention'd in the Indictment, was produc'd, and Dr. *Chamberlain* and *Cleave*, his Clerk, depos'd, that it was a true Copy.

L. C. J. Did you deliver that very Note, that Mrs. *Price* deliver'd you, to Dr. *Chamberlain*?

Dugdale. Yes, I did, and receiv'd it back again.

L. C. J. And your copy'd it?

Cleave. Yes, I did.

Then the Note was read. After which

— *Wright* was sworn.

He depos'd, That he heard Mrs. *Price* desire *Dugdale* to be kind to Father *Harcourt*, and that *Dugdale* afterwards told the Deponent, it was upon account of his Evidence: And that sometime after, he heard Mrs. *Price* say she had been to visit Father *Harcourt*, who took her in his Arms, and said, do not cry for me, for I die in a good Cause. And she said farther, if the King commanded her to be burnt at a Stake, she wou'd submit to it, and so wou'd the whole Party:

And

And *Dugdale* answer'd, While you give these kind Expressions, you wou'd cut his Head off: And she reply'd, You are a Rogue; I am satisfy'd; and that she often said, there were not four greater Rogues between this and Hell than the King's Evidence.

L. C. J. Was this before she talk'd of *Harcourt* & *Wright*. Yes, a great while.

L. C. J. It is strange she shou'd tamper with him after she had said he was such a great Rogue.

Mr. Solicitor. Who shou'd she tamper with but one she thought a Rogue?

— *Cross*, the Vintner, sworn.

He depos'd, That Mrs. *Price* came often to his House in *June* and *July* last, and used to send for Mr. *Dugdale*, and that she was at his House also with *Dugdale* after he came out of the Country, and he had heard them discourse concerning *Parsons* and *Harcourt*, but did not know to what the Discourse tended.

Mr. *Chamberlain* was call'd again.

He depos'd, That on a *Monday*, the 22d or 23d of *September*, Mr. *Dugdale* having acquainted him there was a Design to take off his Evidence, he came with his Clerk to Mr. *Dugdale's* Chamber, and both of them being shut up in his Closet, there came a Woman into the Chamber whom Mr. *Dugdale* saluted by the Name of Mrs. *Price*, and they discours'd together; and he heard the Woman tell Mr. *Dugdale*, that the *Spanish* Ambassador was unwilling to treat with him then, because his Interpreter was out of Town, and 'twould be dangerous to make use of another Interpreter, but that the Duke of *York* wou'd protect him and pardon him, and give him a thousand Pounds to maintain him: And *Dugdale* said, You know, Mrs. *Price*, that I began not this Intrigue with you, but you propos'd it to me; and that she own'd she propos'd it to him: And that she press'd Mr. *Dugdale* very much to go with her to the *Gate-House*, and he went; and that the Deponent staid there till he came back.

L. C. J. Did you hear her say what the thousand Pounds was for?

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L

Dr.

Dr. Only that he was to be gone.

Cleave was call'd again.

He depos'd, That he was in *Dugdale's* Clofet with his Master, and he heard *Dugdale* ask the Woman who came in (and he saluted by the Name of *Price*) When he shou'd go to the *Spanish* Ambassador's, and she answer'd, It was not convenient then, for his Interpreter was out of Town; but Mrs. *Price* added, That if he wou'd come over to the Church of *Rome*, and take off his Evidence, he shou'd have 1000*l.* secur'd to him; and *Dugdale* demanding how, she said, she wou'd bring him a Person of Quality, in a Week's Time, who shou'd secure and confirm it to him.

Dr. *Chamberlain*. That I heard too.

Cleave. And she said, he shou'd have the Duke of *York's* Protection, and a Pardon not only for his Body but for his Soul: And *Dugdale* replying, What signifies my going out of the Way, when there is Dr. *Otes* and others to go on with the Evidence; she said, We do not care so much for them, for the Duke's Eye is only upon you.

Mr. *J. Pemberton*. Did you hear that, Dr. *Chamberlain*?

Dr. *Chamberlain*. I heard the Duke named, but do not remember that Particular: She several times desir'd him to speak softly, and then Mr. *Dugdale* repeated the Thing over again, that we might understand it.

L. C. J. Now prove this Gentlewoman to be the Person.

——— *Holmes* was sworn.

He depos'd, That he went with his Master, Dr. *Chamberlain*, to Mr. *Dugdale's* Lodging on Monday the 22d of September, and that he saw Mrs. *Price* go up, and saw her come down again, and the Prisoner was the Woman, he was sure of it.

Sir *Robert Southwell*, Clerk of the Council, was sworn.

He depos'd, That when Mrs. *Price* was examin'd before the Council the 23d of October, and it was demanded who fram'd the Paper mention'd in the Indictment, she said, she study'd it her self,

and

and indicted it her self, and one Mrs. *Man* writ it out for her: And Mr. *Tasborough* being likewise examin'd, acknowledg'd he did tell Mr. *Dugdale*, that unless he did sign it, he cou'd not proceed to get him any Favour; for that was to be the Foundation to testify that he was a Man of that Sorrow that he had express'd himself to Mrs. *Price*; and he added, that if *Dugdale* had sign'd the Paper, he wou'd presently have carry'd it to a Magistrate.

Mr. *Sanders*, of Council for Mrs. *Price*, said, it was true, Mr. *Dugdale* and Mrs. *Price* were Fellow-Servants in my Lord *Alton*'s Family, where they contracted a great Familiarity, and, indeed, that Mr. *Dugdale* had promis'd her Marriage, tho' afterwards he thought fit to desert her: That upon his coming to *London* he sent for her again, and they renew'd their Intrigue; and it was very likely that she, being a Papist, wou'd solicit one with whom she had that Familiarity for those of her Party; but he suppos'd *Dugdale* had fram'd this Story of suborning him only to get rid of her, tho' it was a base Thing to serve one so with whom he had contracted Marriage.

The Defendant's
Council enter
upon his Defence.

Page 467.

Mr. *J. Pemberton*. A Man ought to prefer the publick Good to his Mistress.

L. C. J. It is much they shou'd be contracted, when she told him he was a great Rogue.

Mr. *Sanders*. I desire it may be observ'd, that it was after she had told him he was a Rogue that 'tis said she did suborn him.

Mr. *J. Pemberton*. And therefore she thought him fitter for her Purpose.

Mr. *Sanders*. But if she had a Purpose to suborn him, she wou'd not have call'd him Rogue to his Face, that was not the Way to insinuate her self.

Sir *John Nicholas* was sworn.

He depos'd, That *Dugdale* did acknowledge, before the Council, that he had made some Proposals of Marriage to Mrs. *Price*, but nothing of a Contract.

Mrs. Benwel was sworn.

She depos'd, That Mr. *Dugdale* used to come to her House, at the *Green Lattice* in *Brownlow Street*, and send for Mrs. *Price*; that he had sent for her twenty Times, and she always came to him if she was at Home: And the last Time he sent for her was the *Sunday* Se'night before she was taken.

Page 468.

Another Woman was sworn.

She depos'd, That Mr. *Dugdale* used to send for Mrs. *Price* before the *Papists* were banish'd by Proclamation out of Town, and then Mrs. *Price* desir'd the Deponent, if Mr. *Dugdale* came to ask for her she wou'd not tell him where she was.

Bridget Lee was sworn.

She depos'd, That a Quarter of a Year before *Harcourt* was try'd, Mr. *Dugdale* came to her and offer'd her five Shillings to tell him where Mrs. *Price* was, but she refus'd.

Mr. *J. Pemberton*. This was before he went out of Town; there had been no tampering then.

Mrs. *Holland* was sworn.

She depos'd, That Mr. *Dugdale* was in Mrs. *Price's* Company for two Hours in Lent last.

Mr. *Sanders*. We offer this as Evidence that we kept him Company upon another Occasion, and not with a Design to suborn him to retract his Evidence.

Mr. *J. Pemberton*. Why did you write your Note then?

Page 469.
Tasborough's De-
fence.

Mr. *Polexfen*, of Council with Mr. *Tasborough*, said, That notwithstanding any Evidence that had been given, his Client, Mr. *Tasborough*, might be very innocent; for that it appear'd, that Mrs. *Price* told him that Mr. *Dugdale* was sorry for what he had sworn, and wou'd retract his Evidence. And *Dugdale* him'self says that he did seem to comply, and treat as if he was yielding.

Mr. *J. Pemberton*. But he tells you that *Tasborough* said that Mrs. *Price* had acquainted him with what Propositions she had made of 1000*l.* and that he was the Man that was to confirm the Promises she had made.

L. C. J. li

L. C. J. If that had not been in the Case, perhaps you don't talk much out of the Way; but *Tasborough* tells him, If he will retract his Evidence according to that Note that was produc'd by Mrs. *Price*, and read by him, that he should have 1000 l. for his Pains: Can you answer that?

Mr. J. *Pemberton*. And why did *Tasborough* use the Duke of *York*'s Name, and say, he had Authority from him to propose these Things? This was certainly a very great Wrong to so great a Prince.

Mr. *Polexfen*. It is said in that Paper, that he should fall under great Displeasure and Danger, and therefore was forc'd to hide, to secure himself from those he should make his Enemies by it: This was Terror enough, and he must live afterwards, and we say, what Money she offer'd was to take off his Fears of Want: And we say, Mr. *Tasborough* came thither to make good that Part of the Paper which says, he must be protected and maintain'd. And he might say, he had a Subsistence and Provision for him if he did deserve it:

And there was a great deal of Difference between offering Money to a Man to swear a Falshood and retract a Truth, and offering Money to bring Truth to light and to retract a Falshood: And to preserve a Witness from perishing, one may promise him Protection and Assistance.

Witness, whether
justifiable to offer
him a Reward,
tho' to speak
Truth.

L. C. J. A thousand Pound Reward is too great a Temptation: We do not live in so virtuous an Age, but a Man may be tempted by such a Promise to retract his Evidence, tho' it was true.

Mr. J. *Pemberton*. By this you let in all manner of Temptations to Witnesses; we shall never know where we are.

L. C. J. Mr. *Dugdale*, did Mr. *Tasborough* ever ask you if it was true, and you could do it with a safe Conscience?

Dugdale. He never nam'd Truth or Falshood; it was only to get me over, to retract what I had said.

L. C. J. Did Mr. *Tasborough* talk with you of going away?

Dugdale. He told me, I had best absent my self beyond Sea for a while, and I should have a convenient Passage; and he said, he had acquainted the Duke of York, and the Duke had given him Orders to press the Note home; for the Duke would not believe me true unless I sign'd the Note.

Mr. Thomson, of Council also with *Mr. Tasborough,* urg'd in his Behalf, That he was a Gentleman of a fair Character, and not likely to have been concern'd in such an Affair as *Mr. Dugdale* would represent this to be; and said, *Mr. Tasborough* had apply'd himself to my Lord Privy-Seal, upon *Mrs. Price's* giving him this Information, that *Dugdale* might receive the Encouragement that was fitting in this Matter.

Sir Robert Southwell appear'd again.

He depos'd, That *Mr. Tasborough* did say before the Council, he had been once or twice with the Lord Privy-Seal.

Mr. Alderman Barker was sworn.

He depos'd, That he had known *Mr. Tasborough* fourteen or fifteen Years, and he was always look'd upon as an honest peaceable Man.

Here *Mrs. Price* desir'd she might speak for her self; which being permitted, she said, That *Dugdale* importun'd and solicited her to go to the Duke of York, and promis'd to pay her Coach-hire; and for this she appeal'd to *Dugdale* himself; but *Mr. J. Pemberton* told her, she must not interrogate him.

Mrs. Price added, That *Dugdale* solicited her to draw the Note mention'd in the Indictment, and she appeal'd again to *Dugdale*, if he did not tell her he was perjur'd. Then the Court told her, she was an impudent Woman, and must have her Mouth stopp'd, and would not suffer her to say any more.

Mr. Serj. Maynard having summ'd up the Evidence for the King, *Mr. J. Jones* directed the Jury, (the Chief Justice being gone off the Bench) and told them, The Familiarity that had been prov'd between *Dugdale* and *Mrs. Price*, was rather an Argument of the tampering than the contrary,

A Witness shall not be ask'd a Question which casts any Reflection upon him. J

Mr. J. Jones sums up the Evidence, and directs the Jury.

trary, for it was not usual to attempt such Things with Strangers; and he thought both Parts of the Indictment well prov'd as to her, as well the perswading *Dugdale* not to give Evidence against *Harcourt*, as the suborning him to retract his Evidence afterwards. As to *Tasborough*, indeed, he did not appear to be concern'd in the first Part; but in the suborning *Dugdale* to retract his Evidence he was equally guilty with her, for that he did not (as had been suggested) charge *Dugdale* with giving a false Testimony against his Conscience, or urge him to repent, but only advises him to be gone, and retract his Evidence against the Catholicks, and he should have 1000 *l.* for his Reward, and Protection and Pardon. Now, to advise one who had done an Injury to Repentance and a Recantation, might be a very good Thing, but to do it with a Reward of 1000 *l.* could not be justify'd; that tho' this was the usual Way of suborning People, for no Man ever came to another and directly desir'd him to forswear himself, but to tell him of 1000 *l.* Reward, and how he might serve the Catholick Cause, &c. were very proper Arguments in this Case to prevail with him, and such as few People in his Circumstances would have resisted; and that tho' Mr. *Tasborough* might have the Character of an honest Man, it was not to be doubted but he had been taught, that in the Service of the Catholick Cause all such Practices would be justify'd.

Then the Jury laid their Heads together, without going from the Bar, and found both the Defendants guilty of the Trespass and Offence whereof they stood indicted: And they were both committed to the Marshal of the King's Bench; tho' Mrs. *Price* pray'd she might be remanded to the Gate-House where she was Prisoner before. The Court said, She was now in their Custody, and they should shew her no Favour.

Offering a Witness a Reward to give his Evidence, criminal.

Page 475.
The Defendants are found Guilty.

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The TRIAL of BENJAMIN HARRIS, Bookseller, upon an Information exhibited by Mr. Attorney General, for a Libel reflecting on the King and Government; at Guildhall, London, on Thursday the 5th of February, 32 Car. 2. 1679.

Sir Geo. Jefferies.

The Libel entitled: *An Appeal from the Country to the City, &c.*

Page 477.

Sir W. Scroggs.

The Evidence of the Defendant's publishing it.

MR. Recorder, in opening the Charge, observing the great Concourse of People, said, He hop'd they came rather to blush than to give Encouragement to such Crimes, tho' they liv'd in an Age where all Sorts of Rebellion and Faction were countenanc'd, and Magistrates revild and scandaliz'd, as if People thought themselves authoriz'd so to do; that this Libel was as vile a Piece as ever was contriv'd in Hell, tho' it had a plausible Title, viz'd *An Appeal from the Country to the City, for the Preservation of his Majesty's Person, Liberty, Property, and the Protestant Religion*; but it was so far from tending to the Welfare of the Government, that it was design'd only to stir up Sedition and Rebellion; and the Defendant, as an Aggravation of his Crime, had boasted, That Thousands would stand by him in it.

The Lord Chief Justice added, That if the Book was not down-right Treason, it border'd upon it. Then the Witnesses were call'd, and first, Mrs. Groves, a Printer's Wife. She depos'd, That she had half a Dozen of the Books of the Defendant's Man, *Mary Darby* was call'd. She depos'd, That she had four of them. *Mr. Benj. Took* was sworn. He depos'd, That he saw several Quires of those Books in the Defendant's Shop.

The Printer's Man was sworn.

He depos'd, That they work'd off those Books in the Night, and the Defendant gave him Six-Pence.

The

The Council for the Defendant admitted, That their Client sold the Book; but said, that he did not do it *maliciously*; he saw the Book about Town, and bought a Parcel of them, hoping to get some Money by them in the Way of his Trade, but had no Intention to scandalize the King or Government.

The Defendant call'd two of his Neighbours to his Character, who depos'd, That the Defendant was a quiet peaceable Man, and not used to oppose or speak disrespectfully of the Government.

Then *Robert Stevens* was call'd as a Witness for the King, who depos'd, That the Defendant was esteem'd an Anabaptist; and that when he was question'd by the Master and Wardens of the Stationers Company for selling such scandalous Things, he answer'd, He had several Thousands to stand by him.

Then the Chief Justice said, That altho' the Defendant's Council would not have the Selling such a Book to be so great an Offence, it had lately been resolv'd by all the Judges, That all Persons who wrote, printed, or sold any Pamphlet, that was either scandalous to publick or private Persons, such Books might be seiz'd, and the Persons punish'd by Law; and that all Persons exposing Books reflecting on the Government might be punish'd; and farther, that all Writers of News, tho' not scandalous, seditious, or reflecting on the Government, if they wrote false News, they were indictable and punishable.

That as for the Book in Question, it contain'd such base Reflections on all Sorts of Persons, he thought there could not be a worse, and instanc'd in the following Paragraph, (*viz.*) "The greatest Danger accruing to your Persons, as well as to the whole Kingdom, upon the King's untimely Death, will proceed from a Confusion and want of some eminent and interested Person, whom you may trust, to lead you up against a French and Popish Army: For which Purpose, no Person is fitter than his Grace the Duke of Monmouth, as well for Quality, Courage, and Conduct, as for that his Life and Fortune depends
" upon

Penal to print or expose to Sale a Pamphlet reflecting on the Government or a private Person, and such Pamphlets may be seiz'd: Persons who write false News punishable, tho' it be not seditious or scandalous.

The Pamphlet
proposes the sit-
ting up the D. of
Mortmouth for
King, after the
Death of K.
Charles.

“ upon the same Bottom with yours. He will
“ stand by you, and therefore you ought to stand
“ by him, and remember the old Rule, *He who*
“ *hath the worst Title ever makes the best King* ; and
“ instead of *God and my Right*, his Motto might be
“ *God and my People*. ” That, except the Writer
of this Book, there could not be a worse Man
than the Defendant, who, for a trivial Profit,
neglected the Peace and Quiet of his Country,
and would set us altogether by the Ears for the
Value of a Groat.

The Jury not per-
mitted to have
the Book out
with them.

Harris is con-
victed.

Then the Chief Justice ask'd the Jury, if they
doubted in any Point of Law? And one of them
ask'd, If they might not have the Book out with
them? But the Court answer'd, They could not.

After the Jury had been out a little Time, they
return'd, and brought the Defendant in Guilty of
selling the Book: The Chief Justice told them, They
were to find only Guilty or Not Guilty; then
the Foreman said, He was *Guilty*, in which they
all concurr'd.

And committed
to the King's
Bench.

Mr. Recorder then desir'd he might be com-
mitted, and thereupon he was deliver'd to a Tip-
staff to be carry'd to the *King's-Bench*, tho' the De-
fendant was very importunate to be carry'd to
Newgate, or any other Prison.

After the Tryal, the Chief Justice took Notice
of the Clamour and Noise that had been made
by some factious People, and told them, that he
did, in Behalf of the Government, very highly
resent it, and if he could find out any of those
Shouters, they should not go unpunish'd.

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*The TRIAL of FRANCIS SMITH, Book-
seller, upon an Information for a Libel,
before Mr. Justice Jones, at Guild-
hall, the 7th of February, 32 Car. 2,
1679.*

The Information
for a Libel re-
flecting chiefly
on my Lord Chief
Justice Scroggs.

THE Information set forth, That the Defen-
dant, after the Tryal of *Sir George Wakeman*,
Marshal, Rumley, and Carter, who were try'd for
High-

High-Treason the 18th of *July 1679*, before Sir *James Edwards*, Lord-Mayor, the Lord Chief Justice *Scroggs*, &c. did publish a scandalous Libel, entitled, *Some Observations upon the late Tryal*.

Mr. Recorder shew'd, that this Libel was design'd principally to reflect on the Lord Chief Justice *Scroggs*; and he said, there were a Sort of idle busy Fellows that would not be pleas'd unless every Thing went according to their Fancies; and tho' they would not allow the Pope to be infallible, yet every factious Fellow expected that Tribute should be paid to him, as if he was the only fit Person to give Measures to Government and Governors: That when Magistrates acted according to their Consciences, and would not be steer'd by their Humours, they must be look'd upon as Papists, or brib'd by such People; and he hoped, when Men should dare to disparage great Men, who acted by supreme Authority, some extraordinary Measures would be taken to inflict due Punishment upon them. — He said, he saw this was a Matter of great Expectation, and he thought, as he was the Mouth of the City of *London*, it was his Duty to say, and he dare affirm, notwithstanding there were some factious Spirits, that the Generality of the City of *London*, all good Men, and Men of Abilities, were for the King and the Government as it was then establish'd by Law: *At which there was a general Hum.* Then he shew'd the Aggravations of the Defendant's Crime, and told the Jury, he hoped they would do Justice on such Offenders; and he said, he hoped the greater Part of the Crowd came rather to shew their Abhorrence than to countenance such base Actions.

As the Witnesses were about to be sworn, Mrs. *Smith* came into Court, and said, Her Husband was sick, or he would have come himself, and submitted; whereupon Mr. *Williams*, the Defendant's Council, admitted the Record, and the Jury found the Defendant Guilty. Then Mr. Justice *Jones* told Mrs. *Smith*, he would interceed for her Husband to my Lord Chief Justice *Scroggs*, and he did not doubt but his Lordship would forgive

Mr. Recorder's Speech.

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The Defendant's Council admit the Record, and he is convicted.

Page 481.

give him; and Mr. Recorder said, he would contribute what he could to it.

The TRIAL of JANE CURTIS, for publishing the aforesaid Libel reflecting on the Lord Chief Justice Scroggs, at Guildhall, the same 17th of February.

Mrs. Curtis, who published the above Libel, submits, and is convicted.

THE Information being open'd, the Defendant came into Court, and said, She begg'd Pardon if she had done any Thing amiss; and Mr. Williams, her Council said, He admitted the Record; whereupon the Jury found her Guilty.

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The TRIAL of Sir THOMAS GASCOIGNE, Bart. for High-Treason, at the King's-Bench Bar, on Friday the 11th of February, 32 Car. 2. 1679.

Sir Thomas is arraign'd.

ON Saturday the 24th of January, Sir Thomas Gascoigne was brought from the Tower to the King's-Bench Bar, in order to be arraign'd: And Sir Thomas being very deaf, the Clerk of the Crown went down to the Bar, and read the Indictment to him.

The Indictment for High-Treason, in conspiring the Death of the King, the Subversion of the Government, Religion, &c.

The Indictment sets forth, That Sir Thomas Gascoigne, late of the Parish of Elmet in the County of York, Bart. as a false Traitor, &c. not weighing the Duty of his Allegiance, &c. on the 30th of May, in the 31st Year of the King, at the Parish of Elmet aforesaid, did, with other false Traitors, conspire, compass, and imagine the Death of his Majesty, the Subversion of the Government, and to introduce the *Romish* Religion; and for the effecting thereof, the said Sir Thomas Gascoigne, Sir Miles Stapleton, and the said other false Traitors, did, at the Time and Place aforesaid, assemble themselves, and there resolve to put their said Treasons in Execution. And the better to accom-

accomplish their said traitorous Imaginations and Purposes, they did agree to contribute large Sums of Money to several of his Majesty's Subjects unknown, to procure them to kill the King, introduce Popery, and subvert the Government; and that the said Sir *Thomas Gascoigne*, on the Day and Year aforesaid, did also himself solicit one *Robert Bolron* to kill the King, and did promise him for that Service the Sum of 1000 *l.* All which is laid to be against the Duty of his Allegiance, the King's Peace, &c.

To which Indictment Sir *Thomas* pleaded Not Guilty.

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Sir *Thomas* said, He was above fourscore and five Years old, and desir'd he might be try'd by a Jury of Quality of his own Country, who knew something how he had liv'd hitherto.

The Lord Chief Justice told him, He should have a Jury of Gentlemen of his own Country.

Then Sir *Thomas* demanded, When he should be brought to his Tryal? And was told, the latter end of the Term; but he said, he could not bring his Witnesses to Town so soon.

Mrs. *Ravenscroft*, Grandaughter to Sir *Thomas*, acquainted the Court, That some of his Witnesses were at *Paris*, and used some Importunity to have obtain'd a longer Time, but the Court said they could not grant it; and the Lieutenant of the *Tower* had a Rule to bring Sir *Thomas* to the Bar again on *Wednesday* the 11th of *February*.

On *Wednesday* the 11th of *February*, Sir *Thomas* being brought to the Bar, Mr. Attorney said, Sir *Thomas* had a Rule for one to assist him because he was deaf, and he had got three; but Sir *Thomas* alledging, that one of them knew his Witnesses, the Chief Justice permitted two of them to stay.

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The Jury being call'd, Sir *Thomas* was told their Names as they came to the Book, and having challeng'd several, at length the following Gentlemen were sworn, viz.

Sir *Thomas* is brought upon his Tryal.

Sir Tho-

Sir Thomas Hobson,
Richard Beaumont,
Stephen Wilks,
Fervas Rockley,
Robert Leck,
William Batt,

} Esqs

Charles Best,
John Crosse,
Barton Allet,
William Milner,
John Oxley,
Francis Oxley.

} Esqs

The Jury being charg'd with the Prisoner, Mr. Dormer open'd the Indictment, and Mr. Serjeant Maynard and Mr. Attorney shew'd the Nature and Course of the Evidence: Then the King's Council call'd their Witnesses.

Page 485.
Bolron's Evidence
of the Prisoner's
making a collu-
sive Conveyance
of his Estate, to
prevent a Forfei-
ture.

Robert Bolron and ——— Monbray were sworn. Mr. Attorney. Mr. Bolron, acquaint the Court with what you know of Sir Thomas Gascoigne.

Bolron. My Lord, in 1674 I came to live with Sir Thomas, as Steward of his Coal-Works, and a little before Easter, 1675, I (being in the next Room) heard Sir Thomas tell Mr. Charles Inglesby, that lest his Estate shou'd be forfeited to the King, he was resolv'd to make a collusive Conveyance thereof; which Charles Inglesby approv'd of, and said he wou'd draw the Defeazance himself, and order'd Sir Thomas to bring none but Protestants to witness it; and I went afterwards with Sir Thomas to Sir William Inglesby's and saw him receive 1000*l.* Consideration Money colourably, (as I heard him tell Charles Inglesby) and I heard the Deed read, and was Witness to the Execution of it; 'twas dated the 8th of April, 1675, and was for the Conveyance of Sir Thomas's whole Estate to Sir William Inglesby for seven Years, reserving only (besides the Consideration Money) 100*l.* per Annum for Maintenance; and, as I heard him tell Sir Miles Stapleton (about the Time of the Plot's being discover'd) he did this to secure his Estate, in Case he shou'd be discover'd that he was in the Design of killing the King.

Mr. J. Jones. Were you a Protestant at that Time?

Bolron. Yes, when the Deed was seal'd; and I turn'd Papist about the Whisfontide after, and chang'd

Page 486.

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chang'd again in *May* or *June*, on Discovery of the Plot.

Mr. Serj. *Maynard*. Relate what you know of Sir *Thomas's* Concern in the Plot.

Bolton. In the Beginning of 1676, as I was coming into the Room, I heard Sir *Thomas* tell one *Christopher Metcalfe*, that he resolv'd to send 3000*l.* to the Jesuits in *London* for carrying on the Design; and I remember Sir *Thomas* mention'd 300*l.* for *Corker*, 300*l.* for *Harcourt*, 300*l.* for *Cornwallis*, alias *Pracid*, and the rest by 300*l.* a Piece, for other Persons; and said he wou'd return 300*l.* a Time by *Richard Physick* to prevent Suspicion; and in the Beginning of 1677, I heard him say he had return'd it, and that were it a thousand Times as much, he shou'd be glad to spend it in so good a Cause.

Mr. J. *Jones*. Pray, what was the Design? Did they say any Thing about the Plot?

Bolton. At other Times I have heard them say 'twas for killing the King.

L. C. J. Go on with your Evidence.

Bolton. In 1677, Sir *Miles Stapleton*, *Charles Inglesby*, Squire *Gascoigne*, my Lady *Tempest*, *Thomas Thwng*, Sir *Walter Valvasor*, Sir *Francis Hungat*, *Robert Killingbeck*, and *William Rushton*, met at *Barnlow Hall*, (Sir *Thomas Gascoigne's* Seat) and there agreed to fix a Nunnery at *Dolebanck*, if their Design of killing the King took Effect, and the Roman Catholick Religion was establish'd in *England*, which they likewise resolv'd to venture their Lives and Estates to promote; and Sir *Thomas* said he'd settle 90*l.* per Annum, for ever, as a Support to the said Nunnery, for which the Company agreed he shou'd be canoniz'd after his Decease; and one *Barloe* went with them afterwards to take Possession of the Nunnery.

Page 487.
Of Sir *Thomas's* erecting a Nunnery in *Torkshire*.

L. C. J. How long did they stay there?

Bolton. About six or seven Hours, during which Time I was in and out of the Room, and heard what I've related.

L. C. J. Well, go on.

Bolton. Sir

Bolton. Sir *Thomas* did accordingly establish a Nunnery at *Dolebanck* about 1677, and, as I have heard him say, Mrs. *Lashals* was Lady Abbess, Mrs. *Becknith* and Mrs. *Benningfield* her Assistants, *Ellen Thwyng*, *Elizabeth Butcher*, and others, were Nuns; and as *Mary Root* took Horse to go with them, Sir *Thomas* said, there goes an old Maid and a young Nun.

L. C. J. Whereabouts was this House.

Bolton. Near *Ripley*; they were only to continue there till the King was kill'd, and then to reside at *Heworth*, about half a Mile from *York*, and they did live at *Dolebanck* near a Year and half, till the Discovery of the Plot.

Mr. J. *Jones*. How do you know they liv'd there?

Bolton. I have, several Times, seen Letters lie open, sign'd by *Pracid* and Mrs. *Lassels*, and dated from *Dolebanck*.

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Mr. Attorney. What other Place did you hear him mention?

Bolton. *Broughton*, but I don't know of any being there; some came to *Heworth Hall*, but they generally resided at *Dolebanck*; and Sir *Thomas* settled an Estate at *Manton* of 90*l.* per Annum, which he bought of Mr. *Maleverer*, for the Establishment of it.

L. C. J. Well, go on then.

Bolton. As I was reading *The Lives of the Saints*, about *March* last, in a Window opposite to Sir *Thomas's* Chamber, I heard Squire *Gascoigne* tell Sir *Thomas*, that he had obtain'd a License from the Justices to go to *London* about a Law-Suit then depending betwixt Sir *Thomas* and Squire *Nelsbop*, and that Mr. *Middleton* had likewise got one, on Pretence of going into the South to receive Rents; but the Squire said, as soon as he finish'd with *Nelsbop*, he wou'd commit the Design, in Agitation, into such Hands as wou'd not fail to do it; but wou'd not stay to see Execution, for he wou'd fly into *France*; and Sir *Thomas* commended the Resolution; and Squire *Gascoigne*, because he'd be sure to be no Sufferer, caus'd

License for a Passport to travel.

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he caus'd all the Stock to be sold off his Ground, and Mr. *Middleton* sold his very Household-Goods.

L. C. J. Methinks they shou'd be cautious of speaking loud enough to make Sir *Thomas* hear, lest any of the Servants might likewise over-hear them.

Bolton. He was not then so deaf as they say he is and he now seems to be.

Mr. J. *Dolben*. Well, go on then, Sir.

Bolton. My Lord, the 30th of *May* last, Sir *Thomas* bid me go into the Gallery next the Priest's Lodgings, and there *William Ruston*, my Confessor, came to me; and on my telling him, in Discourse, that I had taken the Oath of Allegiance at the last *Pontfret* Sessions, he said all were damn'd that kept it, and order'd me to come to him next *Sunday* for Absolution, for he said he had Power from the Pope to absolve me, which few other Priests had; and I urging 'twas no Sin, for that Mr. *Ellis* (Mr. *Vavasor*'s Priest) had writ Commentaries on the Oath, and justify'd the taking it, *Ruston* said, he was a Fool and wou'd be check'd for it, and said, the Pope had Power to depose the King, and had done it, and told me I shou'd merit Heaven if I'd kill him, and he wou'd assist me in the Act, and quoted that Place in the Scripture, *Thou shalt bind their Kings in Fetters, and their Princes in Chains*; and said, unless the King wou'd turn Roman Catholic the Pope wou'd give the Kingdom to another; but when I deny'd being concern'd in any such Deed, he bid me consider of it and come to him again: When I came down, the Servants told me that Sir *Thomas* had left Orders I should not leave the House till he return'd.

L. C. J. Did you live with him then?

Bolton. No, my Lord; I left his Service the 1st of *July* 1678, and liv'd about a quarter of a Mile from him, and this was in *May* 1679; so I stay'd till he came in, and he then call'd me into his Chamber, and ask'd what Discourse I had with *Ruston*, which having related, he took me by the Hand, and said, [if thou wilt engage in the Design to kill the King, I'll give thee 1000*l.* and

The Jesuits hold it Damnation to take the Oath of Allegiance.

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Bolton swears the Prisoner offer'd him 1000*l.* to kill the King.

send thee to my Son *Thomas*,] and told me, if he was not in Town I should have Instructions to find the rest that were concern'd; and when I refus'd being concern'd in such a wicked and bloody Deed, he desir'd me to keep his Discourse secret; but when I had consider'd it, I went immediately to the Justices.

L. C. J. How soon, and to whom did you go?

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Bolton. Within a Fortnight I went to Mr. *Tindal*, and made Oath that Sir *Thomas* offer'd me 1000*l.* to kill the King; but he saying, that he must acquaint the Council, and that it might be a Month before he had an Answer, I desir'd him not to proceed, (lest, in the mean Time, the Priests might escape) till I came up to *London* my self.

L. C. J. What Time came you thither, and to whom did you apply?

Bolton. I think 'twas in *June*, and Mr. *Tindal* gave me a Letter to his Brother to carry me to the Council, which having lost at *Ware*, I discover'd my Business to the Man that keeps the *Green Dragon* in *Bishop's-Gate-Street*, who had me to Sir *Robert Clayton*, and Sir *Robert* went to my Lord *Shaftsbury*, and got an Order of Council about me.

L. C. J. Did you leave Sir *Thomas Gascoigne's* Service in good Friendship?

Bolton. Yes, my Lord, and was often at the House afterwards; I always went thither to hear Mass.

L. C. J. Had you any Estate when you left his Service?

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Bolton. I had a Lease *parol* of a Farm for nine Years, which I rented of Sir *Thomas* at 15*l.* and a Mark *per Annum*, and I have 7*l.* *per Annum* of my own; but I had forgot to acquaint your Lordship, that in *September* 1678, I heard Sir *Thomas* tell my Lady *Tempest*, he would send 150*l.* to *Delabanck*, in hopes the Blow would be shortly given; and *Cornwallis* writ Word he had receiv'd it, but that 'twas too little to carry on so great a Design, for this was to arm the poor Catholics when the King was kill'd, and we had no Notice,

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Notice, at that Time, of the Plot's being discover'd.

Mr. J. Pemberton. Acquaint Sir Thomas with what he hath said, and see if he will ask him any Questions.

Mr. Hobart repeated Part of the Evidence to him, and Sir Thomas acknowledg'd he had Money of Sir William Inglesby, and seal'd a Deed to Sir William, and said, that Physwick was his Servant, by whom he had return'd a far greater Sum than 3000*l.* for the Use of his Sons, Daughters, and other Relations, and said, that for one large Sum of 1000*l.* Mr. Hobart knew how 'twas dispos'd of; he said, likewise, 'twas true that his Son went to London with a Design to go into France, but he knew not Mr. Middleton's Intent; and affirm'd, that what had been depos'd, in Relation to the Meeting at Barnlow, the Establishment of a Nunnery, and the Design to kill the King, was utterly false, for that he had never heard of it before.

Then Mr. Hobart repeated to him the Discourse betwixt Ruston and Bolron, and Sir Thomas's Offer of 1000*l.* and Sir Thomas said, Bolron might talk with another for ought he knew, but deny'd there was any such Offer by him; and ask'd Bolron, if he ever knew him have 200*l.* together.

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Bolron. I have seen 500*l.* at a Time in the House, and have seen 700*l.* in Physwick's Hands. My Lord, his Estate was then, at least, 1200*l.* per Annum, tho' I believe, he has settled about 600*l.* per Annum on his Son; which being repeated to Sir Thomas, he said, he wish'd Bolron would make it good; and said, there was not one Word of Truth in all Bolron's Accusation.

Mr. Attorney. Then pray, Mr. Mowbray, tell your Knowledge.

Mowbray. My Lord, I shall first speak as to the Plot in general, and then to Sir Thomas Gascoigne in particular. I came to wait on Sir Thomas in his Chamber (tho' not as an hir'd Servant) in the Beginning of 1674, and continu'd with him till 76, during which Time, Mr. Adam-

Mowbray's Evidence of Sir Thomas's Concern in the Plot.

The TRIAL of

son, Fincham, Stapleton, and Killingbeck, all Priests, and the two *Thryngs*, used to visit and confer with *Mr. Rushton*; and I, being diligent in attending *Sir Thomas* at the Altar, was much in his Favour, and permitted to be in his Chamber when the Priests were in private with him, and often heard them talk of a Design to advance the Popish Religion, and that 'twas like to be speedily effected, in Regard most of the considerable Papists were engag'd in it; and they said, if fair Means cou'd not do it Force must be used, and particularly, that *London* and *York* were to be fir'd; they said likewise, that the King had promis'd the Jesuits abroad to establish their Religion when he was restor'd, which they despair'd of, and he was therefore adjudg'd an Heretick, and to be kill'd; and *Rushton* declar'd, he had given the Oath of Secrecy and the Sacrament to *Sir Thomas*, *Squire Gascoigne*, my Lady *Tempest*, and *Mr. Stephen Tempest*, and that they had engag'd to be faithful and secret, and to be active therein to the utmost of their Powers.

L. C. J. Were you a Papist then?

Monbray. Yes, my Lord: About *Michaelmas* 76, there was another Meeting of Priests, and others, where they declar'd the King was an Heretick, and that the Pope had excommunicated him and all other Hereticks of the three Nations, and that Force must be used; and then *Rushton* produc'd a List of four or five hundred Names, which he read over, among which were *Sir Thomas Gascoigne*, *Squire Gascoigne*, my Lady *Tempest*, *Mr. Vavasor*, *Mr. Francis Hungat*, *Sir J. Savil*, the two *Townleys*, *Mr. Sherborne*, and others; I saw *Sir Thomas's* Name, and do believe, on my Oath, it was his Hand: The Title of it was, *A List of them that are engag'd in the Design of killing the King, and promoting the Catholick Religion*.

L. C. J. Was it mention'd, in the List, for killing the King?

Monbray. Yes, my Lord; and they said the Pope had given a Commission to execute the Design, and had also given a plenary Indulgence of 10000 Years to all those who should either act or contribute

contribute thereto, besides a Pardon and other Gratisfications. Now, my Lord, concerning Sir *Thomas*; There was he, his Son, my Lady *Tempest*, and Mr. *Rushton*, discoursing together, about *Michaelmas* 76, of killing the King and firing the two Cities; and Sir *Thomas* assur'd *Rushton* that he wou'd observe the Oath of Secrecy, and contribute, to the utmost of his Power, to promote the Design; and they did unanimously agree, that 'twas a meritorious Undertaking, and said, they would venture their Lives and Fortunes in it.

L. C. J. Were you in the Room?

Mowbray. I stood close at the Door, and overheard them, and Dr. *Scapleton* coming in, inform'd them of my being there, on which my Lady *Tempest* call'd, and order'd me to go and entertain some Strangers below.

Then Mr. *Hobart* repeated the Evidence to Sir *Thomas*, and when he came to mention the Oath of Secrecy, Sir *Thomas* reply'd, He hath gotten this out of the News-Books, for I never heard of it before; and added, There's not a Word of Truth come out of his Mouth: Why didn't he discover it before?

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Mowbray. My Lord, Mr. *Addison* flatter'd me, and perswaded me to continue a Papist, lest I should discover it: and after the Plot came out, and I had turn'd Protestant, and taken the Oaths of Allegiance and Supremacy, he threaten'd to take my Life if I discover'd it; besides, my Lord, I had no Friends, and my Circumstances wou'd not permit me to come to *London* to do it.

L. C. J. I wonder they did not give you the Oath of Secrecy.

Mowbray. I took it in 76; Mr. *Rushton* reserv'd the Sacrament for me, and swore me, upon it, to be faithful and secret, and that I should not reveal those Discourses I was privy to.

Mowbray confesses he had taken the Oath of Secrecy, and the Sacrament upon it.

Mr. Serj. *Maynard*. Sir *Thomas* says, he was never Master of 200*l.* together; we will now produce his Almanack.

The Almanack was produc'd, and shewn to Sir *Thomas*, who acknowledg'd the Writing to be his Hand.

Mr. Attorney. Here is, The 15th to *Peter*, for 100*l.* to *Corker*: I desire to know what that was for?

Sir *Thomas Gascoigne*. For Part of *Mary Appleby's* Portion; I think, I return'd it to *Corker*, because I did not know in what Part of *Paris* she liv'd.

Mr. Attorney. Here's another Book mentions 900*l.* to Mr. *Corker*, upon Agreement between them.

Sir *Thomas Gascoigne*. We have been several Years returning Money; I was to pay 100*l.* per Annum to *Mary Appleby*, and several Sums to others, as the Rents came in; it may be 2000*l.* from first to last.

Mr. Attorney. Why was 900*l.* paid to *Corker*, as here mention'd, between July 77, and June 78?

Sir *Thomas Gascoigne* look'd in the Almanack, and said, 'twas a great many Years, and at several Times.

Page 495.

Mr. Attorney. 'Tis otherwise in the Book. Then here's another Passage, [Take *Hemorrh*, at an easy Rent, of the Widow, and purchase the Reversion of *Craddock*, and, in the Interim, *Dawson*.]

Sir *Thomas Gascoigne*. My Niece, *Thwyng*, was born in the House, and had a Mind to live in't, and this was a Memorandum to assist my Brother's poor Children, whom I assisted with Money; the Widow was Sir *Walter Vavasor's* Sister, who was to sell the House, and *Craddock* meant to sell all the Lordship, but the Children bought the House and one Close, and the rest was sold otherwise; I have forgot what *Dawson's* put down for.

Mr. Attorney. Ask him if Mrs. *Thwyng* was a single Woman, and to have the whole House to her self.

Sir *Thomas Gascoigne*. She had her Brother with her, and they desir'd some other House if they could not get that.

Mr. *Hobart*. *Bolton* says Mrs. *Thwyng* was a Nun, Mrs. *Lassels* was to be Lady Abbess, &c.

Sir *Thomas Gascoigne*. I know nothing of it.

Mr. Attorney. Then here is, [Memorandum, acquaint Mr. *Thomas Thwyng* with the whole De-

sign.]

sign.] This *Thwyng* is a Priest in *Newgate* at this Time.

Sir *Thomas Gascoigne*. 'Twas my providing Money for *Ferdinando Thwyng*, that's now dead, and his Sister, to purchase the House.

Mr. Attorney. No, but this is *Thomas Thwyng*.

L. C. J. Then it's likely that a House was to be purchas'd for a Nun and a Priest for some such Business as is sworn.

Mr. *Hobart*. He says no, my Lord, 'twas the Brothers and Sisters that liv'd next Door to him, and he might acquaint *Thomas Thwyng* with such his Intention.

Mr. Attorney. We'll now produce a Letter taken amongst his Papers, with a Mark of Sir *Thomas*'s own Hand to it. Then a Letter was read, subscrib'd, *Jo. Pracid*, and directed to Sir *Thomas*, dated, *Dolebanck*, June the 9th, 1678. It contain'd most grateful Acknowledgments for all charitable Favours; tells him his Niece and Mrs. *Hastings* desire to see him at *Dolebanck*, and that the Writer had sent a Paper safe to Mrs. *Beddingfield*, and inform'd her of Sir *Thomas*'s Design to have this Proviso inserted in the Writing, viz. [That if *England* be converted, then the whole 90*l. per Annum* is to be apply'd here in *Yorkshire*, about, or at, *Heworth*, &c.] which would be for the Glory of God, &c. and that the good Religious there were desirous to remove to Mr. *Dawson*'s, because the House there wou'd not receive more Scholars, and had other Inconveniencies; and again, desir'd to see him, &c.

L. C. J. It's pretty plain there was a Nunnery design'd.

Mr. Recorder. We have another Letter, dated the 24th of *May* last, from *York Castle*, from the same *Pracid*, I suppose, and the Time of receiving it endors'd on the Back-side by Sir *Thomas* himself; which Letter was also read.

The first Part of the Letter gives an Account of the Health and Circumstances of four or five Women-Prisoners of Sir *Thomas*'s Acquaintance, and then declares, that his Superior at *London* had inform'd him, [that the pretended Oath of

Page 496.
A Letter, directed to Sir *Thomas*, and found among his Papers, produc'd as Evidence.

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to take it.

Allegiance cou'd not be taken as it was worded ; for that three Briefs had been sent from the Pope, exprelly forbidding it, and that the last declar'd it damnable to take it.] It mention'd likewise, that the *Sorbon* Doctors were against it, and says, that whoever in *England* gave Leave, deceiv'd People, and acted contrary to the Catholick Church; and that all the Superiors, both secular and regular, had agreed it could not be taken, and that Mr. *Hutchinson*, alias *Berry*, who writ in Defence of it, was turn'd Protestant, &c.

Forty Papists cor-
victed of not tak-
ing the Oath of
Allegiance in
Yorkshire.

Mr. J. *Dolben*. This *Pracid*, I suppose, was the Occasion for many Gentlemen refus'd the Oath of Allegiance: I convicted above forty of them in that County for not taking it.

Mr. Attorney. Now, Sir, we shall prove he has return'd great Sums of Money, because he has said, he never had 200*l.* together.

Mr. *Phiswick* sworn.

Phiswick depos'd, That he was Servant to Sir *Thomas* above six Years, and had, in that Time, return'd (as appear'd by a Particular he produc'd) 6128*l.* but said, Part of it was for Sir *Thomas*, Part for his Son, and Part for my Lady *Tempest*, and that he cou'd not give a more particular Account unless he had his Almanack.

Mr. J. *Dolben*. What Estate had his Son to live on?

Phiswick. Betwixt 4 and 500*l. per Annum*, my Lady *Tempest* had 300*l.* and Sir *Thomas*, I believe, 1600*l. per Annum*.

L. C. J. Tell him they have done with the Evidence against him, and if he has any Witnesses he must call them.

Mr. *Babbington* call'd.

Sir *Thomas*. I desire he'll acquaint the Court with the Difference betwixt Mr. *Bolton* and me.

Page 498.
The Prisoner calls
Witnesses to shew
Bolton's Malice a-
gainst him.

Babbington. My Lord, last Spring Sir *Thomas* gave me Orders to sue Mr. *Bolton* on two Bonds, one for 28*l.* the other 20*l.* which Mr. *Bolton* understanding, offer'd a Conveyance of a House at *Newcastle*, which Sir *Thomas* was unwilling to accept; but on my acquainting him that the Debt was desperate, and that he need not take this as a Satisfaction,

Satisfaction, but only as an additional Security, he consented I should draw a Deed for that Purpose, and *Bolron* gave me a Letter under his own Hand for the doing it; *Sir Thomas* also gave me Directions to deliver Declarations of Ejectment, in Order to turn *Bolron* out of the Farm he hir'd of him, because he did not pay his Rent.

L. C. J. What Time was this?

Babington. The Discourse was in *May*, but the Direction for drawing the Deed was in *June*, and a Day was appointed a little before *Whitsontide* for Sealing the Deeds; *Bolron* himself was willing to do it, but his Wife wou'd not, unless *Sir Thomas* wou'd deliver up the two Bonds, which he refus'd, and the Deed was not seal'd.

L. C. J. Are you a Protestant?

Babington. Yes, my Lord, and always was.

Mr. Attorney. Yes, I know him very well; he is an Attorney at large.

Babington. The latter End of *June*, *Bolron* sent for me, I came over, and went with him to *Sir Thomas's*, and *Bolron* telling him he had a Chapman for his Houses, who wou'd lay down the Money in two or three Days, *Sir Thomas* was satisfy'd, but chid *Bolron* for his Negligence in managing his Coal-Pits. After we came away, *Bolron* ask'd if *Sir Thomas* design'd to sue him on the Bonds, I told him, I had Orders to do it if the Money was not paid; and he then ask'd if he would turn him out of the Farm, I said, yes, unless he paid his Rent; and he then deny'd he had receiv'd a Declaration of Ejectment, tho' my Man afterwards made Affidavit of the delivering it, and I had Judgment thereon; but on my telling him *Sir Thomas* design'd it, *Well*, (said he) *then, by God, I will do that which I did not intend to do.*

Mr. J. Jones. Did you tell this to *Sir Thomas Gascoigne*?

Babington. No, my Lord; I look'd upon it as an idle Expression, but *Moor*, who was bound for him, told me that *Bolron*, to encourage him to be bound with him, said, if *Sir Thomas* sued him, he would inform that he kept Priests in his House.

Then

The TRIAL of

Then *Obadiab Moor* was call'd.

Moor. Mr. *Bolron* desiring me to be bound with him to Sir *Thomas Gascoigne*, told me his Brother *Baker* and *Stephen Thompson* would be bound with us, and that I need not fear Trouble, for if Sir *Thomas* sued him he wou'd inform that he kept Priests; so I became bound: The one Bond was payable at *Candlemas* last, the other in *August*, and after *Candlemas*, *Bolron* not paying the Money, I desir'd Mr. *Babbington* to take out a Writ against him, but he cou'd not be found. Presently after he came and gave Information at *London*, and on the 8th of *August* last I met him at *Ferry-Bridge*, and he said, You and I have often discours'd of Sir *Thomas Gascoigne*, you may do me Good; if you do not, pray do me no Harm. I then ask'd him if Sir *Thomas* was in the Plot, for, said I, you have often told me he was as innocent of it as the Child that's unborn; he said, he was then a Papist, and did but equivocate, and if he had told a thousand Lies and kill'd twenty Protestants, their Priest would have forgiven him; and then pull'd out 10*s.* and said, 'tis all the Money I have, pray do me no Harm, for you know I have all along deny'd it.

Mr. *J. Jones*. What, are you a Protestant or a Papist?

Moor. Born and bred a Protestant.

Stephen Thompson was call'd.

Mr. *J. Dolben*. Well, what do you know of this Business?

Thompson. Mr. *Bolron* was Steward of Sir *Thomas Gascoigne's* Colliery, and Sir *Thomas*, not liking his Accompts, turn'd him out; and there being a great deal of Money due to Sir *Thomas*, *Bolron* desir'd me to be bound with him for it, and told me there were several Debts which he had not accounted for, and he said he would gather them in and discharge the Debt; and I enter'd into Bonds of 60*l.* for Payment of 28 at *Candlemas*; and *Bolron*, about that Time, selling off many of his Goods, I enquir'd how I shou'd be secur'd, and he bidding me not to fear, I ask'd him if Sir *Thomas* was concern'd in the Plot, he said

said he was Sinless of it. Some Time after I went with him to Sir *Thomas*, to desire three Weeks Time for Payment, and Sir *Thomas* would give but a Fortnight; and after we came from him, *Bolron* said, if he do sue me I'll do him an ill Turn; and soon after he went to *London*. When he return'd, and had taken Sir *Thomas*, I ask'd him what he design'd to do, and he answer'd, don't fear, I am to receive 30*l.* on the King's Account, but another bids 60*l.* and I know what *Ores* and *Bedloe* had, and won't bate a Farthing.

Then *William Backhouse* was call'd.

Sir *Thomas*. I desire he'll acquaint the Court of the Threats *Bolron* used to his Wife to oblige her to swear against her Conscience, and his saying that he was promis'd he shou'd get 500*l.* by it.

Backhouse. On the 7th of *July* last, I serv'd a Warrant on Sir *Thomas*, and was order'd to bring the Witnesses before the Justices. Mrs. *Bolron* was then sick, and said, she knew nothing against Sir *Thomas*; but *Bolron* said she must go, or he would have her drawn at the Cart's Arse.

— *Hamsworth* was next call'd.

She depos'd, That when *Bolron* told his Wife she must go swear against Sir *Thomas*, she cry'd, and refus'd to go; and on *Bolron's* threatening to tie her to the Horse's Tail, she said, she knew of no Misdemeanor in Sir *Thomas*, touching his sacred Majesty, or the Church Government.

Nicholas Shippon was next call'd.

Sir *Thomas*. I desire he'll tell what Discourse he had with *Bolron* the Day after the Race.

Shippon. *Bolron* came to my House the 30th of *May* last, to desire my Boy to carry a Letter for him, and staid all the Afternoon, being afraid to stir about for fear of the Bailiffs.

Bolron. It's all false, my Lord, I was most of that Afternoon at Sir *Thomas's*, where they were marking Sheep.

Then *Roger Gregson* was call'd.

Sir *Thomas*. What did *Bolron* say to you about *August* last?

Gregson. I met *Robert Bolron* about *August*, after he came from *London*, and ask'd him how Sir *Thomas*

Thomas did, and how he'd come off about the Plot (as they call it); he said, Sir *Thomas* was well, and might come off well enough, but 'twould cost him much Money; I then ask'd him how they differ'd, he said, that Rogue, *Addison*, the Priest's Brother, was the Cause, who had call'd him to Account, or else he had not done it, and I believe that was the Reason; and after he was rode from me he return'd, and said, the King had like to have been stabb'd by one of the Privy Council, but the King made his Escape, and that now they wou'd the sooner believe his Information.

Mr. J. Jones. What are you, a Papist?

Gregson. No, I am no Papist, nor ever was, I deny it.

James Barlowe was call'd.

Whether an Accomplice in the same Treason may be a Witness for the Prisoner, he is committed or indicted.

Mr. Serj. *Maynard* objected that he was accus'd of the same Crime, and Mr. Solicitor said *Bolton* had sworn his being at the Consultation; but Mr. Justice *Dolben* said, as there was nothing on Record against him, they cou'd not refuse to hear him, and the Jury might believe as they pleas'd. [Here Mr. *Hobart* asking why they did not indict him, he was check'd by the Court for being pragmatical, and told, that tho' he was to assist Sir *Thomas* in his Defect of hearing, he was not to manage as a Council, and was ask'd if he writ Sir *Thomas*'s Brief, which he deny'd.]

Then Mr. *Ravenscroft* offer'd to tell what *Barlowe* had declar'd to him.

Mr. J. *Dolben*. Mr. *Ravenscroft*, if your Discourse be relating to this Business, that *Mowbray* bears Sir *Thomas* Ill-will for turning him off, or the like, you may speak; but if it be only a Story of another's Knowledge, it's of no Effect.

Mr. *Ravenscroft*. About nine a-Clock last Night *Barlowe* came to me: Says he, Mr. *Ravenscroft*, —

Mr. J. *Dolben*. Come, don't tell us the Preamble, but the Story.

Mr. *Ravenscroft*. He told me that *Mowbray*, a little before his going from Sir *Thomas*, combin'd with, or rather seduc'd him, to rob Sir *Thomas* of a great Sum of Money, which he design'd to conceal,

conceal, but now finding Sir *Thomas's* Life depending on the Credit of *Monbray's* Testimony, he thought himself oblig'd to tell the Truth.

Mr. J. Dolben. He makes himself a Rogue by combining, and you have made him a Knave by his Confession; he is not a competent Witness against the Credit of the other.

Then *George Dixon* appear'd.

Dixon. I was at *William Bailey's* last *August*, and *Mr. Bolron* and *Mr. Monbray* came thither to drink, and in an upper Room they fell into Discourse about Sir *Thomas Gascoigne* and my Lady *Tempest*, I being with *Bailey* at the Bottom of the Stairs, heard *Monbray* say Sir *Thomas* is a very honest Man, for ought I know, but I would hang my Lady *Tempest* if I knew any Thing to do it; and after some Consultation, they agreed to meet at *Bolron's* House to conclude what to do against them, and said they should be well rewarded for it.

Bolron. I neither know the Man, nor ever he'll such Discourse.

Monbray. Not I; neither have I drank at that House by the Old Church at *Leeds* these two Years.

William Bailey was call'd.

Bailey. My Lord, I live by the Old Church at *Leeds*, and *Mr. Bolron* and *Mr. Monbray* coming thither, I fill'd a Pot of Ale and carry'd it up Stairs and left them; but hearing them talk of a Plot, I stopp'd, and heard *Bolron* say, Sir *Thomas Gascoigne* has been very severe against us both, and now we have a Way to be reveng'd; *Monbray* said, he thought Sir *Thomas* an honest Man, but if he knew any Thing to hang my Lady *Tempest* he wou'd discover it; and *Bolron* reply'd, But Sir *Thomas* troubles me, and if I don't make out something against him (which must be by two Witnesses) he'll ruin me; then *Monbray* ask'd how they shou'd effect it, and *Bolron* answer'd, If thou'lt come to my House I'll put thee in a Way, and we shall be well rewarded; and *Monbray* fix'd a Day to go to him: *Dixon* was with me and heard it all.

Mr. J. Dol-

Page 503.
Further Evidence
of *Bolron* and
Monbray's Malice
against the Prisoner.

Mr. J. Dolben. He does not say half so much. Were you in the Room?

Bailey. No, I was on the Stairs Head, and the Door was left open.

Mr. J. Pemberton. Did you say any Thing to them about this?

Bailey. No, but I told it to one *Loftus*, a Smith; and I suppose Mr. *Babington* heard of it.

Babington. 'Twas the common Discourse of *Leeds*; I was first told it by one *Johnson*, and afterwards, in *October*, the Bailiff of *Leeds* told me of it.

Bolton. I was not at *Leeds* in *August*, and except the first Part of the Month, I was in *Northumberland* and *Durham* searching for Priests.

Then Mrs. *Jefferson* was call'd.

Mr. J. Jones. Come, Mistress, what do you know?

Mrs. *Jefferson*. I heard Mr. *Monbray* say, in *August* last, that Sir *Thomas* was a very honest Gentleman, that he knew nothing against him, and believ'd he was wrongfully accus'd.

Matthias Higgingil was next call'd.

Mr. J. Dolben. What can you say to this Business about Sir *Thomas Galsigne*?

Higgingil. The 25th of *September* last I was at an Ale-House with Mr. *Monbray* and Mr. *Loga*, and they were consulting together how to disgrace Sir *Thomas*, and take away his Life; and *Monbray* call'd me out, and said, Sir *Thomas* and my Lady *Tempest* have done all they could to disgrace me, (I suppose he meant their giving out they suspected he had robb'd them, which became the Country Talk) and now, said he, I shall match them; I'll requite them.

Then Francis *Johnson* appear'd.

Mr. J. Dolben. Well, come, what do you know?

Johnson. The first Month Mr. *Bolton* came into Sir *Thomas*'s Service, I know he lost 3*l*. by him, for I cast up the Account my self.

Bolton. My Lord, I don't deny I lost 3*l*. and Sir *Thomas* forgave it me.

Mr. *Pebles*, Clerk of the Peace for the County of *York*, was call'd.

Sir *Thomas*.

Sir Thomas. I desire you'll speak what you know of Mr. Bolron's Carriage?

Pebles. Mr. Bolron came into my Company last Assizes at York, and I not knowing him, he said he was Prosecutor against Sir Thomas Gascoigne, and ask'd me whether 'twere fit to pay Money to a Man that was indicted as a Traitor? I told him he might before Conviction. A little after, he told me he was abus'd by the Judges who came the Circuit, for they slighted him, and sent their Servants (when he went to speak with them) to know what he would say to them, but said he had writ them his Mind, on which I left him, but he follow'd me, and said, he cou'd do me a Prejudice but would not. I said, I shou'd not court his Favour, and went away; he then follow'd me into the Street, and ask'd if I would help apprehend a Traitor, and shew'd me a Woman, and said she was greatly concern'd in the Plot, and was to be the first Lady Mayorefs of York after the King was kill'd, but seeing he did not lay hold of her I left her: Some time after he procur'd a Warrant from the Council against me, and brought it to a Justice of Peace, and at the next Meeting of the Justices the Business was examin'd, where Bolron pretended he had Witnesses to prove that I took Money to keep a Man from taking the Oath of Allegiance; and one Witness was produc'd, who depos'd, that he never gave me Money, and that he had taken the Oath; then he pretended Mr. Danford, an Attorney, could prove something against me, but he living fourteen Miles off, a Hearing was appointed the Monday following, and Notice given to Danford, who then depos'd, he knew nothing of it, nor ever gave me Money on such Account; and I was discharg'd.

Mr. J. Dolben. Is that all you know?

Pebles. That's all in particular, my Lord; but his Reputation, in general, is but indifferent among the Grand Jury and Gentlemen of the Country; most People speak ill of him.

Evidence of Bolron's swearing against others.
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Bolron's Character.

Then

Then *Hardwick* was call'd.

He depos'd, That when *Bolron's* Wife, Brother, and Sister, were to be carry'd before the Justice to give Evidence against *Sir Thomas Gascoigne*, that they begg'd to be excus'd, and refus'd to go, and *Bolron* told them they must go.

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William Clow was call'd.

Mr. J. Dolben. Come, what say you?

Clow. I arrested *Bolron* at the Suit of *Higgringil*, and *Bolron* said he would make *Sir Thomas* pay the Debt, or he would play him such a Trick as he little dream'd of.

Then *Mr. Hobart* stood up.

Mr. J. Pemberton. Pray, speak what you know of your own Knowledge.

Hobart. I know the Payment of most Part of the Money that has been mention'd to be return'd by *Sir Thomas*, 1800*l.* of it was paid to *Mr. Trumbal* at *Mr. Mawson's*, about that Purchase, 200*l.* to a Client of mine, 80*l.* to the Widow *Causon*, on Bond, and above 300*l.* to *Corker*, in six Years Time.

Mr. J. Pemberton. Nay, in four Years Time.

Hobart. This 300 and 300 before I drew the Receipts for; and *Sir Thomas* order'd me, when *Mr. Corker* came for it, I should have a Receipt from *Mrs. Mary Appleby*, to whom *Sir Thomas* was Guardian, and it came back sign'd by her; she had 100*l.* per Annum, and sometimes 200*l.* return'd her.

Mr. J. Dolben. How came she to have 900*l.* paid her in four Years Time?

Hobart. In a Suit depending betwixt *Sir Thomas* and *Mr. Appleby*, her Father, my Lord Keeper *Bridgman* order'd that 100*l.* per Annum (for each of the two Daughters) shou'd be paid to *Sir Thomas* out of the Rents arising in *Yorkshire*; and during the Suit there was three or four Years Arrear; and *Sir Thomas* being press'd for the Money by *Mrs. Appleby*, who was beyond Sea, *Sir Thomas* sent to *Corker* to get the Money return'd to her.

Then a Woman appear'd.

Sir Thomas. What do you know of *Mowbray's* being suspected of Theft at my House?

Witness.

VOL.

Witness. He offer'd me 5*l*. to have gone away; and afterwards told me he design'd to have clapp'd me up in Prison, and laid all upon me.

Mr. Serj. *Maynard*. My Lord, the most that has been offer'd by the Prisoner has been to discredit the Witnesses; we shall prove, by Sir *John Nicholas* (Clerk of the Council) that Sir *Thomas* himself acknowledg'd *Bolron's* Honesty, and that he deny'd the Knowledge of *Rushton*, and afterwards own'd it.

Sir *John Nicholas* was sworn.

Sir *J. Nicholas*. Sir *Thomas* confess'd before the Council that *Bolron* was his Servant till within these Twelve Months, that for his Honesty he had nothing to say to him, till of late, that he had not behav'd himself so well in giving Information against him, and that he found him, what he always thought him to be, a Fool; he deny'd, at first, that he knew *Rushton*, the Priest, but at his second Examination said, the Fear of an old Law against harbouring Priests occasion'd him to do it.

Witnesses produc'd to support the Credit of the King's Witnesses.

Mr. Attorney. We will now call a Witness, or two, in Answer to what has been said of threatening his Wife.

Mrs. *Bolron* was sworn.

Mrs. *Bolron* depos'd, That she was unwilling to go before the Justice, because she cou'd say little to the Purpose; but that her Husband would have her go, if she said nothing: But that he never threaten'd her, to make her accuse Sir *Thomas*, or any one else.

Mrs. *Bolron*, Sen. was sworn.

She depos'd, That she heard her Son, *Bolron*, say to his Wife, she should go if she said nothing, but he did not threaten her; and that she heard Sir *Thomas* say (after *Bolron* was marry'd) that he never had a more faithful Servant, and that he would do what he cou'd for him.

Mr. *J. Dolben*. Call *Phiswick* again: You were trusted by all the *Gascoignes*, What say you to *Bolron's* Reputation?

Phiswick. I can say nothing against his Honesty; I knew no Ill by him while I was his Fellow-Servant.

Mr J. Jones directs
the Jury.

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Witness being a
Papist, and un-
sworn, said not
to be of equal
Credit with the
King's Witness.

Then Mr. Serjeant *Maynard* and Mr. Solicitor summon'd up the Evidence for the King: After which, Mr. Justice *Jones* also summ'd up the Evidence, and gave his Directions to the Jury; wherein he tells them, that as to the 6000*l.* which *Phiswick*, Sir *Thomas*'s Receiver, had testify'd was return'd to *London*, there was a great Part of it of which no Accompt was given; for tho' 300*l.* per *Annum* was return'd to my Lady *Tempest*, and 400*l.* a Year to Mr. *Gascoigne*, that cou'd not amount to near so much in four Years: He observ'd also, That there were two Witnesses for the King as express as cou'd be; and tho' *Shippon* had depos'd, that *Bolron* was at his House that very 30th of *May*, when he says Sir *Thomas* made him the Offer of 1000*l.* to kill the King, and then it was impossible *Bolron* shou'd be at the Consult he pretended, or that Sir *Thomas* shou'd afterwards make him that Offer he had sworn to, yet he told them they were to consider that the King's Witness was upon his Oath, and he that testify'd against him was not; and farther, that the Witness for the Prisoner was a Papist, and so of less Credit in a Cause of this Nature; for he cou'd not want an Indulgence for saving one from the Gallows, who was to be canoniz'd for a Saint if the Plot took Effect. That as to *Bolron*'s telling *Babbington*, (when he acquainted him he had Orders to sue him) *That he wou'd then do that which he aid not intend to do*; this was but an ambiguous Speech, and it was hard to infer from it, that he intended to swear falsely, and take away his Master's Life, and so commit both Murder and Perjury: And as to the Witnesses who depos'd, that they heard *Bolron* both say and swear that Sir *Thomas Gascoigne* was not concern'd in the Plot, that, Mr. *Jones* said, might very well be, because *Bolron* was then a Papist, and engag'd in the Plot; however, he did not swear judicially, nor was he bound to discover what he knew to the Men he spoke to; but now he was upon

upon his Oath in a Court of Law, and gave an exprefs Testimony: As to the Witnesses who depofes that *Monbray* faid, in *August* laft, he knew nothing of the Prifoner, he faid, his Fears of the Papifts (which he hinted in his Evidence) might occafion that Speech: As to the two Witneffes who depos'd they heard *Monbray* and another contriving how to take away Sir *Thomas Gascoigne's* Life, &c. he thought it highly improbable they fhould fpeak of it before Strangers, and tho' the Witneffes afterwards faid they were not in the Room with *Monbray*, yet then they did not agree entirely in their Testimony, one faying, they were on the Top of the Stairs, and the other at the Bottom.

Mr. J. *Dolben* added, He obferv'd that the Jury took Notice how improbable it was that Sir *Thomas Gascoigne* fhould fue *Bolron* upon thofe Bonds, and take a Courfe to turn him out of his Farm at a Time when he knew *Bolron* was privy to this Conſpiracy, and that Sir *Thomas* himſelf had offer'd him 1000*l.* to kill the King. Mr. J. *Dolben* acknowledg'd the Thing was improbable; but yet, he told them, they muſt give a Verdict according to their Evidence: And that there being two Men who ſwore poſitively to a Thing which lay within their own Knowledge, ſcarce any Improbability ought to weigh againſt ſuch Evidence. That the Papifts had many ſecret Contrivances, and *Bolron* himſelf was a Papift at that Time.

Improbability not
of Weight againſt
poſitive Evidence

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Mr. J. *Pemberton* ſaid farther, That *Bolron* having taken the Oath of Secrecy and the Sacrament upon it, Sir *Thomas* was in no Apprehenſion of his diſcovering him, let him uſe him never ſo ſeverely, for that *Bolron* being a Papift, he dare not do it on the Peril of Damnation; and tho' ſuch a Streſs was laid upon *Bolron's* being a Debtor to Sir *Thomas*, the Jury muſt not lay any Streſs at all upon it, for if Sir *Thomas* was found guilty, the Money wou'd be due to the King, and *Bolron* wou'd gain nothing by his Conviction.

Sir T. Gage
acquitted.

Then the Jury withdrew; and, after half an Hour's Recess, brought in their Verdict, That Sir *Thomas* was *Not Guilty*; and the Verdict being recorded, the Court arose.

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*The TRYAL of ROGER PALMER, Esq;
Earl of Castlemain in the Kingdom of
Ireland, for High Treason, at the King's
Bench Bar, on Wednesday the 23d of
June, 32. Car. 2. 1680.*

Indictment for
High Treason, in
conspiring the
Death of the King
the Subversion of
the Government,
Religion, &c.

THE Earl was arraign'd at the King's Bench Bar on the 16th of *June*, 1680.

The Indictment set forth, That *Roger Palmer, Esq; Earl of Castlemain* in the Kingdom of *Ireland*, not having the Fear of God before his Eyes, or weighing the Duty of his Allegiance, &c. did, on the 20th of *June*, in the 30th Year of the King, at the Parish of *St. Giles's* in the *Fields*, in the County of *Middlesex*, and with divers other false Traitors unknown, traiterously imagine and intend the Death and final Destruction of the King, and to alter and utterly subvert the ancient Government of this Kingdom, and to extirpate the true Protestant Religion; And to accomplish the said Treasons and traitorous Imaginations and Purposes, The said *Roger Palmer, Esq; Earl of Castlemain*, and other false Traitors unknown, at the Time and Place aforesaid; did traiterously assemble, consult, and agree to kill and depose his Majesty, and introduce the *Romish* Religion in this Kingdom; and the better to effect the same, did traiterously promise divers great Rewards, and pay divers Sums of Money to several Persons unknown, and did also write divers Notes to incite several other Persons to engage in the said traitorous Designs: All which is laid to be against the Duty of his Allegiance, the King's Peace, &c.

To which Indictment the Earl pleaded Not Guilty; and *Wednesday* the 23d of *June*, was appointed for the Tryal.

Wednesday

Wednesday the 23d of *June*, 1680, the Court being set, and the Earl brought to the Bar by the Lieutenant of the *Tower*, the Jurors were call'd, and the following Gentlemen were sworn :

Sir <i>John Cutler</i> ,	} Barts.	<i>Fra. Dorrington</i> ,	} Esqs.
Sir <i>Reginald Foster</i> ,		<i>Hugh Squire</i> ,	
<i>Henry Herriot</i> ,		<i>Charles Good</i> ,	
<i>Richard Cheney</i> ,	<i>John Pulford</i> ,	}	
<i>Thomas Johnson</i> ,	<i>Edward Claxton</i> ,		
<i>John Roberts</i> ,	<i>Fr. Mayhew</i> , Gent.		

The Jury being charg'd with the Prisoner, Mr. *Bonithon* open'd the Evidence, and Mr. Attorney open'd the Indictment, and took Occasion to observe, That my Lord *Castlemain* was the Person who manag'd the Evidence for the Prisoners who were try'd for the Popish-Plot, and was always present at those Tryals, and countenanc'd the Criminals, and became an Intercessor for them. Then the King's Evidence was call'd, and first

Dr. Otes was sworn.

He depos'd, That in the Year 1677, he was sent into *Spain* by the Jesuits, where he staid several Months, and transacted Business for them, and return'd into *England* in *November*, and brought several Letters from the *English* Fathers there; among which was one directed to my Lord *Castlemain*, which the Fathers shew'd the Depo-
nent in *Spain* when they gave it him; and it was to inform my Lord, That the Fathers in *Spain* were very zealous to concur with the Fathers in *England* in the Design, (which was the Subversion of the Government, altering Religion, and the Destruction of the King.)

L. C. J. Was this express'd in the Letter?

Otes. The Word *Design*, was under which we used to comprehend all those Things.

L. C. J. What did you do with the Letter?

Otes. I gave it to the Provincial, Mr. *Strange*, being a Stranger to my Lord myself; nor do I know whether my Lord was then in *England*: But I went over to St. *Omers* in *November* or *December* 77, and there came a Letter from my Lord *Castlemain*

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Otes's Evidence of several Letters sent and receiv'd by the Lord *Castlemain* about the Plot.

soon after, directed to the Fathers of that Society, in which my Lord gave them an Account of that Letter he had receiv'd from *Spain*, and said, He was glad the Fathers in *Spain* had so good an Opinion of his Integrity. And in *March* following there came another Letter to St. *Omers* from my Lord *Castlemain*, (which I saw) giving an Account of a Letter he receiv'd from the Rector of *Liege*, whose Advice he did not like; for the Rector of *Liege* and the Rector of *Ghent* were mighty zealous that the secular Clergy shou'd be concern'd in the Affair, and my Lord said, He was unwilling to have the secular Clergy engag'd, because they were a loose Sort of Men, of no Principles, and not fit to be trusted. In *April* I came over to *England* to the Consult, which was began at the *White-horse* Tavern in the *Sirand*, and afterwards the Conspirators divided themselves into several Companies, where they agreed on the King's Death, and I was employ'd to give an Account of the Sense of one Company to another; and, my Lord, I did consent to the King's Death, and an Oath of Secrecy was administer'd: My Lord *Castlemain* was there [at *Wildhouse*] too within some few Days after the Consult, and he was desirous that an Agreement might be made between the Monks and them, [the *Jesuits*] (for there was a Difference between them) that they might have the Assistance of that Order to carry on the Design.

L. C. J. Wou'd he say, He desir'd Assistance to carry on the Design, and you a Stranger to him?

Otes. I had been at Mr. *Langborn's* Chamber in the *Temple*, Father *Caius's*, and several other Places for them, and had given them an Account of my Business, and I did see this Gentleman the Prisoner there. This was in *May*, I did not know his Name then. It was the latter End of *June*, three Weeks after, before I knew him; but my Lord cou'd have no Apprehensions of me, because he saw they intrusted One with their Concerns.

L. C. J. How did you come to know his Name?

Otes.

Otes. I was going with Mr. *Langborn* over *Lincolns-Inn* Fields, towards *Fuller's Rents*, in *June*, one Evening, and we met my Lord *Castlemain*, whom Mr. *Langborn* saluted, and presented me to my Lord. We went with my Lord to Mr. *Fenwick's* Chamber, where they discours'd of the Transactions of the Consult, and how unanimous the Fathers were in signing the Consult. They talk'd of laying aside the King, and bringing in the Popish Religion; and my Lord said, he wish'd them Success, and that, *Now he shou'd be reveng'd for the Injuries done to him.*

Lord *Castlemain*, Mr. *Otes*. Repeat your Journey again.

Otes. I sail'd for *Spain* in *April* 77, and return'd from *Valladolid* to *England* in *November*. I went over to *St. Omers* in *November* following, and from thence to *Watton*. In *March* 1677-8 I went to *Liege*, and return'd to *St. Omers* again. And in *April* I came over hither, to the Consult, and staid here sometime after.

Otes's Voyages to Spain and Flanders.

Lord *Castlemain*. When you met me in *Lincolns-Inn Fields*, was any Body with me?

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Otes. I did not take Notice of that.

L. C. J. You say you were two Hours at *Fenwick's* Chamber. What was the Main of your Discourse? For what you have said may be contain'd in four Lines.

Otes. They talk'd of the Loss they had sustain'd by the *French* King's taking *St. Omers*; for the Crown of *Spain* had settled four or 500*l.* a Year upon their College; and they were consulting about writing to *Le Chafe*, to move the *French* King to restore that Revenue.

L. C. J. How came you to discourse that Affair in *England*?

Otes. When *Langborn* presented me to my Lord, he told him, I was serviceable to them, and was come from *St. Omers*.

L. C. J. How did they bring in the Discourse of the Design against the King?

Otes. They were Things so generally talk'd of by the Jesuitical Party, that they hardly ever met but they mention'd it: How it was introduc'd

then, I can't be positive; but, as I remember, they were speaking of my going over to *St. Omers* from the Consult, and my returning again to *England* so soon.

L. C. J. Did you know that my Lord *Castlemain* ever heard of this Matter before?

Otes. I think not of the Particulars of the *Design*.

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L. C. J. When you mention *the Design*, do not you always mean the Death of the King?

Otes. The Word *Design* was so taken among us, and so receiv'd by my Lord *Castlemain*.

L. C. J. How can you say it was so receiv'd by him?

Otes. He has often, in his Letters, spoken of introducing the Popish Religion, and annex'd it to the Word *Design*.

L. C. J. Now, methinks, you make the Word *Design* mean something else than killing the King.

Otes. Yes, my Lord, the Subversion of Religion and Government.

L. C. J. Did he put in *the Altering the Government*, as well as the bringing in the Catholick Religion.

Otes. No, my Lord, I won't say that.

L. C. J. When we examine concerning Men's Lives, we must be careful of their Words.

Otes. I had omitted to acquaint the Court, that I saw my Lord *Castlemain* write a Letter that Night I was with him at *Fenwick's* Chambers, which I went to the General Posthouse with, it being late. I saw only the Supercription indeed, but by that I found it the same Hand the Letters were in that we receiv'd from him in *Spain* and at *St. Omers*.

Lord *Castlemain*. You saw Letters in *Spain* from me?

Otes. Yes, I have.

Lord *Castlemain*. Did not you say, at *Wildhouse*, You did not know me, nor I you?

L. C. J. He says, He can't tell whether you knew him, but he did not know you.

Lord

Lord *Castlemain*. Was there any Discourse of killing the King at *Wildhouse*?

Otes. I won't charge it there, because I am upon my Oath, tho' I morally believe there was Discourse bad enough.

Lord *Castlemain*. Was there any Body by at *Fennick's* Chamber besides ourselves, when you say we had that Discourse?

Otes. I don't remember any Body besides Mr. *Langborn*, and *Fennick*, unless a Maid came in now and then.

Lord *Castlemain*. Did you ever discourse with me after that?

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Otes. I don't remember I have.

Lord *Castlemain*. Did not you see me at *Liege* when you were over there?

Otes. No, my Lord, I waited on a Gentleman that went to take Orders, and staid there but one Night.

Mr. J. *Jones*. When did you first discover this Business concerning my Lord *Castlemain*?

Otes. The last Sessions of the long Parliament; And I accus'd him *Trinity* Term was Twelve-Month, and my Lord was committed; for when *Dangerfield* came in and accus'd my Lord *Castlemain*, I brought a Charge a second Time against him: I had charg'd him before the Parliament with having a Hand in the Design in general.

Lord *Castlemain*. When you were before the King, you spoke of a Divorce.

Otes. I will give Evidence of that, if my Lord comes to be indicted for his Priesthood.

Mr. Attorney. What the Witness has said in another Place he is not to treat of now.

Lord *Castlemain*. If I prove him an ill Man in any Place, is not that fit to be spoken here: Since he has brought the King upon the Stage, and accus'd me before his Majesty and your Lordships of a Divorce, I ask him whether he saw it?

Otes. I heard my Lord say at *Wildhouse*, he had been at great Charge to carry on that Business of the Divorce: And a Priest's Chamber being search'd, a Letter was found, wherein the whole Case was stated between him and his Wife *Barbara*;

Otes's Evidence of a Divorce between the Lord *Castlemain* and *Barbara* Dutches of *Cleveland*.

bara :

bara: And, my Lord, I did give the King an Account, that I saw in *Strange's* Hand an Account of a Divorce between my Lord *Castlemain* and *Barbara* Dutcheſs of *Cleveland*.

Witness not to be examin'd of Matters foreign to the Issue.

Mr. Attorney. My Lord, if he may ask ſuch Questions about ſuch foreign Matters, any Man may be catch'd.

L. C. J. This is not ſo remote, but Uſe may be made of it.

Lord *Castlemain*. How can a Man be catch'd in the Truth?

Mr. Attorney. My Lord may catch him, if he can, in any Thing he gives in Evidence here; but he is not bound to answer Questions that concern not the Point in Issue.

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Lord *Castlemain*. I ask you whether you ſaw a Divorce, and where? Or whether you ſaid ſo?

Otes. I do not remember whether I ſaid ſo or no; I have it down, but I have not my Papers here. [*Otes being about to withdraw, my Lord deſir'd he might ſtay; and he ſaid in Court.*

Dangerfield was call'd.

Dangerfield call'd as a Witness for the King.

Lord *Castlemain*. I muſt except to his Teſtimony: He has been convicted of Felony, broke Priſon, and been outlaw'd upon it: Beſides, he is a Stigmatick, has ſtood in the Pillory, and been burnt in the Hand, I deſire the Court will hear what my Council can ſay as to his being a Witneſs.

Mr. Attorney. Here is a Pardon for all theſe Offences.

L. C. J. Is Felony and Outlawry in it?

Mr. Attorney. Yes, my Lord.

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A Pardon will not reſtore a perjur'd Perſon to his Credit; but ſuch Perſon ſhall not be upbraided with it.

L. C. J. If a Man be convicted of Perjury, no Pardon can make him a good Witneſs, tho' it may take off the Reproach ſo far, that he ſhall not be upbraided with the Perjury afterwards: But whether a Perſon burnt in the Hand for Felony and pardon'd, can be a Witneſs, may be a Point fit for my Lord's Council to ſpeak to?

Mr. J. *Jones*. My Lord, do you except againſt that one Particular?

Lord *Castlemain*. I ſtand upon both his being pillory'd and burnt in the Hand.

L. C. J. Tho'

L. C. J. Tho' he shou'd be held capable of being a Witness, yet you may give in Evidence every Record of the Conviction of any Sort of Crimes he has been guilty of, and they shall be read towards invalidating his Testimony.

Lord *Castlemain*. We have Sixteen, but I shall bring but Six.

Mr. *Darnal*, of Council with the Prisoner, insisted, That a Person attainted of Felony cou'd not be a Witness, notwithstanding he had obtain'd a Pardon. He said, it was adjudg'd in 11. *Hen.* 4. That one attainted of Felony, and pardon'd, cou'd not be of a Jury: Also in *Brown* and *Crasshaw's* Case it was resolv'd, That a Man attainted and pardon'd, cou'd not be of an Inquest; and for the same Reason, the Testimony of such Persons was to be rejected: And in 12 *Jac.* in *Brownlow's* Reports, fo. 47, it is reported, That the King pardon'd a Man attainted for giving a false Verdict; yet he shou'd not be again admitted on a Jury; and the Reason given, is, That tho' the Punishment was pardon'd, yet the Guilt remain'd: And in *Cro. Eliz.* fol. 686, in *Shelburn's* Case, it is held, that altho' the King may pardon Simony, yet he cannot enable a Simoniack to retain a Living.

16 Records of Conviction against *Dangerfield*.

One attainted of Felony and pardon'd, cannot be of a Jury.

L. C. J. That is because the Act makes such a one incapable of retaining a Living.

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Simony pardon'd, yet does not restore the Offender to a Capacity of retaining a Living.

Mr. Attorney. What Mr. *Darnal* advances, is contrary to the general Opinion and constant Practice; When a Man is pardon'd, no Man can say he is a Felon, or perjur'd: He can't be reckon'd so to any Intent or Purpose whatsoever.

L. C. J. It is consonant to Law and Reason, that a Pardon shou'd stop Mens Mouths from reviling Speeches, which only tend to a Breach of the Peace, and can be attended with no good Consequences: But it is another Thing to say, the Person pardon'd shall be deem'd *liber & legalis homo*. He may be outlaw'd notwithstanding the King's Pardon.

Mr. *J. Jones*. It restores him to wage Battel, and then he is to be accounted *liber & legalis homo*.

Mr.

One admitted a
Witness after an
Arraignment of Fel-
ony and Pardon.

Whether one may
be a Witness who
can't be of a Jury

Villain disabled.

Clergy restores
on to his Credit.
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Mr. J. Raymond. How many have been Wit-
nesses after they have been convicted of Felony
and pardon'd? Particularly *Witberington*.

Mr. Recorder. He was admitted a Witness,
though the Judges knew he was convicted, and
had receiv'd Sentence of Death.

Mr. Attorney. A great many Men may be ad-
mitted Witnesses, that cannot be Jury-Men.

L. C. J. Give an Instance, besides the Case of
Kindred.

Mr. Attorney. A Villain might be a Witness,
tho' he could not be of a Jury.

L. C. J. Tho' he was not a Freeman, he might
be an honest Man.

Mr. Recorder. My Lord *Hobart* says, A Par-
don takes away the Guilt.

L. C. J. So far as that, he shan't be question'd
for it; but it can't in Reason be said, that a
Man guilty of Perjury, is as innocent as if he
had never been perjur'd.

Mr. J. Jones. In my Lord Chief Justice *Hale's*
Pleas of the Crown, he says, That a Man who
has had the Benefit of his Clergy, is restor'd to
his Credit.

Then Mr. J. Raymond went down to the Common-
Pleas, to have the Opinion of that Bench.

Mr. Recorder. A Pardon takes away not only
Penam, but *Reatum*, according to my Lord *Hobart*.
Felony is an Offence against the King, and when
the King pardons it, it ceases: And in another
Place it is said, It pardons all Disabilities inci-
dent to him.

Mr. J. Jones. That is in Case of a Pardon before
Conviction.

L. C. J. Does not my Lord *Coke* say, The tak-
ing of a Pardon does not prove any Offence;
and that it ought not to be concluded from
thence, that the Person was guilty; but the pro-
per Conclusion is, that he was desirous to be
safe. It can't be thought, that every Man who
is pardon'd, is guilty of all the Offences enumera-
ted in the Pardon.

Mr. J. Jones. There is a Difference taken in
that very Point, between a General and a Special
Pardon:

Pardon: He that accepts a special Pardon must be intended to have some Consciousness of Guilt.

Mr. Justice *Raymond* return'd from the Court of Common-Pleas.

L. C. J. Mr. J. *Raymond* hath put both Cases to my Brethren of the Common-Pleas, (*viz.*) That the Witness was convicted of Felony and burnt in the Hand; and that he was outlaw'd for Felony, and had a general Pardon: They are of Opinion, that a general Pardon would not restore him to be a Witness after an Outlawry for Felony, because of the Interest the Subject hath in him; but where one is burnt in the Hand, they look upon it as a more general Discharge than a Pardon alone would amount to: And they say, if he had been convicted of Felony, and not burnt in the Hand, the Pardon would not have set him upright; but being convicted, and burnt in the Hand, they suppose he is a Witness.—— I perceive my Brethrens Opinion is, That if a Man was convicted of Perjury, a Pardon could not set him right, because of the Peoples Interest in the Thing.

A general Pardon does not restore one out-law'd for Felony to his Credit, but Clergy does restore one convict of Felony.

Page 524.
Convict of Perjury, a Pardon will not restore him.

Mr. *Dangerfield* was sworn.

He depos'd, That about a Year since my Lady *Powis* sent him with a Letter to my Lord *Castlemain*, and that my Lord wrote an Answer by the Deponent, which my Lady *Powis* read aloud to the Deponent and Mrs. *Cellicr*, in which were these Words; *This Person I like well, and tho' he be no Scholar he will serve to instruct the Youths as he shall be directed*: That by the Youths, my Lord, meant the St. *Omers* Witnesses whom his Lordship used to instruct; and it was a common Saying amonst them, when any of them were out in their Parts, *I must go to my Lord Castlemain for my Lesson*; and that my Lord went with them to the Tryal, and complain'd of the ill Usage some of the Witnesses receiv'd there.—— That my Lord was one of the Persons who employ'd him to get *Lane* out of the *Gate-House*, and sent him to his Solicitor, Mr. *Lapson*, (who was then in Court) to know how far he had proceeded in that

Dangerfield admitted to be sworn: He depos'd, That my Lord manag'd the St. *Omers* Witnesses.

The TRIAL of

that Affair; and that the Deponent afterwards got *Lane* discharg'd.

L. C. J. How came you into my Lord's Acquaintance?

Mentions a Sham Plot.

Dangerfield. When I went with my Lady *Powis*'s Letter, was the first Time; and a pretty while after, in the Month of *July*, I went to wait on his Lordship again, about some Letters that came from *Nevill, alias, Paine*, which were of the same Purport with those I convey'd into Colonel *Man-fel*'s Chamber, to promote the Sham Plot: There was a Purpose, my Lord, that so many Letters shou'd be convey'd into the Houses of several Persons of Quality, call'd Presbyterians, (for that was the Character that all Persons who were not for promoting the Catholick Interest lay under.) These Letters of *Paine*'s his Lordship approv'd, and order'd several Copies to be made of them, and said, he wou'd contribute to those who were concern'd in that Matter, and actually sent forty Shillings for his Part, as Mrs. *Cellier* told me.

L. C. J. Who were concern'd in this?

Dangerfield. My Lady *Powis* and the Lords in the Tower: I was by when my Lord *Petre* and my Lord *Arundel* agreed to it; they call'd it the Presbyterian Plot when I discours'd with them about it.

Mr. J. *Jones*. How far was my Lord *Castlemain* concern'd in this?

Dangerfield. I have not heard his Lordship speak of it by that Name.

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L. C. J. What have you to say against my Lord?

Deposits that my Lord was angry with him because he refus'd to kill the King.

Dangerfield. A pretty while after this, in the Middle of *August*, (being the Day after I had been treated with, in the Tower, to kill the King) I waited on my Lord *Castlemain*, who sending his Servant out of the Room, look'd on me with a very stern Countenance, and demanded why I refus'd the Business for which I was taken out of Prison; and added, Was not you in the Tower Yesterday? I answer'd, Yes, my Lord; wou'd your Lordship have me kill the King, I suppose that's the Business; *Yes*, (my Lord reply'd,) *it is*; and fell into

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into such a Fury, that I was forc'd rudely to leave the Room, and go down Stairs.

L. C. J. Had you refus'd to kill the King to my Lord?

Dangerfield. Yes, I said any Body but my King, my Lord. And I have heard my Lord, several Times, in familiar Discourse, call the King Tyrant.

L. C. J. What kind of Fury did his Lordship shew when you refus'd?

Dangerfield. He was in a great Rage: His Lordship is very cholerick, and he was bustling about, I didn't know what he design'd, and was loth to stand the Test of his Fury; he seem'd by his Looks to be meditating Revenge.

Lord *Castlemain*. Was I never angry with you but at that Time?

Dangerfield. I know not of any other Time that your Lordship was angry with me.

Then my Lord *Castlemain* enter'd upon his Defence, and first he procur'd a Record, wherein it appear'd, that one *Hastings* had been prosecuted for Buggery by *Otes*, and upon his Tryal was acquitted; but this my Lord Chief Justice told my Lord *Castlemain* did not affect Mr. *Otes*'s his Credit, for it did not appear from hence upon what Grounds the Jury acquitted the Party, and it was not to be concluded, from the Jury's acquitting a Person, that the Witnesses were perjurd.

The Lord *Castlemain* enters upon his Defence.

Page 526.
Witness's Credit not affected by a Jury's going contrary to it.

Then my Lord call'd Mr. *Hutchinson*.

He depos'd, That he converted *Otes* to the Romish Religion, that *Otes* was very poor, and that the Deponent employ'd him to transcribe some Things for him, for which he gave him ten Shilling; and that *Otes* said, it was a very sad thing to want Bread, and he wou'd suffer no more for Conscience Sake.

L. C. J. You thought this had been meritorious, now, and it is High Treason.

Lord *Castlemain*. He was a Priest, my Lord; but he has confess'd his Error and turn'd Protestant.

Otes. My Lord, I never told him, I wou'd not suffer any more for Conscience Sake, nor did I ever want Bread.

Page 527.

Dr. D.

Dr. D. My Lord, this Mr. *Hutchinson* is mad; he was my Curate at *Barking*, and my Lord of *London* acquainted me with his Distraction, and directed me to provide another Curate.

Mr. *Armstrong* was call'd.

He depos'd, That he was a Scholar with *Otes*, at *Valladolid* in *Spain*, and that *Otes* continu'd there about four Months.

Mr. *Palmer* was call'd.

He depos'd, That *Otes* was an ordinary Scholar at *St. Omers*, but by Reason of his Years he was allow'd to sit at a Table by himself, and had other Priviledges.

Mr. *Hilsley* was call'd.

He depos'd, That *Otes* did not come over with him in the Packet-Boat, when he came to the Consult, (as *Otes* had depos'd.)

Mr. *Osborn* was call'd.

Page 528.

He came to testify that *Hilsley* told him, when he came to *England*, that he left *Otes* at *St. Omers*; but this was held to be no Evidence.

Mr. *Gregson* was call'd.

He depos'd, That *Otes* lay at his House, *Easter* 1677, that he came and lodg'd at his House again about *All Saints*, in the same Year, and that *Fenwick*, the Jesuit, paid for the Lodging, Mr. *Otes* being poor at that Time.

Otes, I had nothing then but what the Jesuits allow'd me, which was a very scanty Living.

Mr. *Litrost* was call'd.

He depos'd, That my Lord *Castlemain* never endeavour'd to procure a Divorce.

Lord *Castlemain*. *Otes* said, before the King and before the House of Commons, that I did actually sue out a Divorce, and he saw it; now I would prove that it was impossible to get a Divorce.

Mr. *J. Raymond*. You must not be permitted to do that, it is not pertinent to the Question.

L. C. J. If you come to prove Mr. *Otes* has sworn falsely in another Matter, and in another Court, tho' you bring several Witnesses to shew he did not swear true, we are not to hearken to them; for this is to make him perjur'd in another Matter which we are not to try here. If he had sworn

Page 529.
A Witness shall not be aspersed for any Testimony he has given of another Matter, and in another Place, without a Record of his Conviction produced.

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in another Place any thing. that contradicts what he says now, it would be proper ; but all he says here is, that you said you expended a great deal of Money about a Divorce.

Lord *Castlemaine*. My Lord, I had indicted him of Perjury, but for Mr. Attorney General ; I employ'd two Persons to attend the Clerk of the Peace for Copies of the Indictments against Mr. *Langborn* and Mr. *Ireland*, and the Clerk of the Peace said, he could not do it without Mr. Attorney's Authority.

Mr. Attorney. The Council did not think it fit you shou'd have them.

The Records against *Dangerfield* were produc'd.

L. C. J. Here it appears, That *Dangerfield* was burnt in the Hand, and out-law'd for Felony, pillory'd for Cheating ; twice pillory'd.

Records of *Dangerfield's* being out-law'd for Felony, and several Times pillory'd for cheating.

Clerk of the Crown. Here is a Record for another Shilling Gilt ; here are three at *Salisbury*, for three several Guineas ; he was adjudg'd to the Pillory for them all.

Mr. *Bennet Dowdal* was call'd.

He depos'd, That Mrs. *Cellier* spoke to him to tell *Dangerfield* that he shou'd not be troubled at my Lord *Castlemaine's* Anger.

L. C. J. You must not ask him what Mrs. *Cellier* said.

Mrs. *Cellier* was call'd.

She depos'd, That she sent *Dangerfield* to my Lord *Castlemaine* that Day Twelve-Month, (and he went from my Lord to the Lords in the Tower) and that an Hour and half after my Lord *Castlemaine* came to her, and was very angry, and said, Mrs. *Cellier*, I thought you wou'd not forfeit your Discretion, to send such a Rascal to me ; if you send him to me again I will bid my Servants kick him ; and that she bid *Dangerfield* take no Notice of my Lord's Anger, for he was a good Man, and tho' he was angry one Time he wou'd be pleas'd another ; and that she wou'd have sent *Dangerfield* afterward to my Lord, and he said, Pray, Madam, don't send me thither, I wou'd rather go 100 Miles on your Errand.

Mrs. *Cellier's* Evidence of my Lord's ill Opinion of *Dangerfield*.
Page 530.

Mr. Dowdal also depos'd farther, That, about the 21st of *June*, *Dangerfield* told him my Lord was angry with him about his going to the Tower, in my Lord's Name, unknown to him.

L. C. J. And yet *Dangerfield* says, That in *August* after, he had this Discourse with my Lord of killing the King.

The Lady *Powis* was call'd.

She depos'd, That she never sent a Letter by *Dangerfield* to any Body in her Life, neither did she ever read a Letter in his Presence, nor was he ever long enough in her Company for her to do it: And Mrs. *Cellier* depos'd, That no Letter was read by my Lady *Powis* in the Presence of her and *Dangerfield*.

Richard Barker was sworn for the King.

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He depos'd, That before *Whitsontide*, 1678, his Servants told him that Mr. *Ores* had been at his House, but it was the latter End of *June* before he saw him in *London* himself.

——— *Turner* was sworn for the King.

He depos'd, That he saw *Dangerfield* at my Lord *Castlemaine's* in *June*, *July*, or *August*, but he thought it was in *July*.

——— *Woodman* was sworn.

He depos'd, That he carry'd a Letter from Mrs. *Cellier* to my Lord *Castlemaine*, and that he receiv'd 3*l.* or thirty Shillings of his Lordship; but being ask'd if it was for *Dangerfield*, he said, he did not know that.

The Chief Justice
directed the Jury.
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Then the Chief Justice began to sum up the Evidence, but was interrupted by Mr. Attorney, who desir'd Leave first to sum up the Evidence for the King: Which Mr. Attorney having done, the Chief Justice went on, and said, If Mr. Attorney had not interrupted him, he should not have left out any Thing Mr. Attorney had taken Notice of; and that he would have no Man think him partial, where our Religion, and the Life of the King, and the Government, were in Danger; but on the other Side he must say, that there ought to be competent Proofs where Men are charg'd with such Things, because their Lives, Estates, and Honours, were at Stake.

As

As to Mr. *Otes's* Testimony, he said, that no great Matter had been offer'd by my Lord against his Credit; but as to *Dangerfield*, they saw many enormous Crimes prov'd against him, and tho' he was allow'd to be a Witness in Law, yet it was the Business of the Jury to weigh the Reputation of the Witnesses; nor did he think the Judge cou'd discharge his Conscience without taking Notice of such Things: That had Mr. *Dangerfield* been only guilty of this Treason, he shou'd have thought him a competent Witness notwithstanding, for that was *Otes's* Case too; but when so many other Crimes of another Sort had been prov'd against him, whether the Man were on the sudden become a Saint, by being become a Witness, he left to them to consider. That they shou'd consider also, how he was contradicted in his Testimony by the Lady *Powis* and Mrs. *Cellier*, tho' it was true, they were not upon their Oaths, but that was not their Fault, the Law wou'd not allow it: And having gone through the Evidence, as well for as against the Prisoner, he told the Jury that where two Witnesses were produc'd, both speaking materially to the same Thing, and one is believ'd and the other not, then there was but one Witness, in Truth, which was not sufficient to find the Prisoner guilty.

Mr. *J. Jones*. I think it necessary, in a Case of Treason, that there shou'd be two Witnesses believ'd by the Jury.

Mr. *J. Raymond*. If the Law says there must be two Witnesses produc'd, it says they must be both believ'd.

Then the Jury withdrew, and, being return'd, brought the Prisoner in *Not Guilty*.

If two Witnesses are not believ'd by the Jury in Treason, the Prisoner ought to be acquitted.

My Lord *Castle-maine* acquitted.

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The TRIAL of JOHN GILES, for an Assault of John Arnold, Esq; a Justice of Peace of the County of Monmouth, the 14th of July, 32. Car. 2. 1680.

The Indictment for assaulting and wounding Mr. John Arnold.

THE Indictment set forth, That the said John Giles, on the 15th of April, in the 32d Year of the King, at the Parish of St. Dunstan's in the West, in the County of Middlesex, did, with divers other Malefactors unknown, (of Malice aforethought) lie in wait, and make an Assault on the said John Arnold; and the Throat and Face of the said John Arnold did grievously cut with a certain Knife, and divers other dangerous Wounds did give the said John Arnold with their Swords, one whereof was between his Belly and his left Pap, of the Depth of seven Inches, two others in his Breast, and two in his left Arm; all which was laid to be against the King's Peace, his Crown and Dignity.

Page 535.

Mr. Gibbs open'd the Indictment, and Mr. Holt and Mr. Thompson open'd the Evidence; wherein they intimate that this was a Breach of the Popish Plot, and that the Reason of this cruel Assault upon Mr. Arnold was occasion'd by his putting the Laws in Execution against the Papists, and particularly his prosecuting and convicting one Evans, a Popish Priest.

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Then the Witnesses for the King were call'd; and, first,

Mr. Arnold was sworn.

Arnold. On the 15th of April last, I was with some Company at the Devil Tavern till about ten a Clock at Night, and then remembering I had Business with Mr. Phillips (my Council in a Cause to be heard next Morning before the King and Council) who lives near the End of Bell-Yard, I desir'd the Company to stay a Moment till my Return, and call'd some of my Friend's Servants (who were in another Room) to go with me; crossing

Page 537.
Mr. Arnold's Evidence of his being assaulted.

crossing *Fleetstreet* I saw two Men in Campaign Cloaks follow me, and imagin'd them to be the Servants I had call'd, and entring into *Bell Yard* one of them got before me and look'd earnestly in my Face; I pass'd him, and by the Light of a Candle in a Woman's Hand saw him perfectly, and it was the Prisoner who now stands at the Bar; his Companions coming up, they laugh'd aloud; I took no Notice, but went on to *Jackanape's-Lane-End*, and there, as I was looking down for the Kennel, I had a Cloak thrown over my Head, and they ran me cross the Lane with my Head so hard against the opposite Wall, that, I think, 'twas broke; I drew, but cou'd not turn to defend my self before I was knock'd down, and perceiv'd a sharp Thrust in my Side, the Point running into my Belly; I defended my self as well as I could, but was run thro' both Arms with a Broad Sword, thro' another Part of my Arm with a small Weapon, and receiv'd several other Wounds; and whilst one of them kept me down with his Foot on my Breast, he was run into the Leg by another of them, I believe, for he said, *Damme, thou hast spoil'd my Leg*; I receiv'd four or five Wounds in my Body, notwithstanding a Pair of Whalebone Bodice I had on, which were not Proof, tho' they (sometimes finding their Swords double) thought they were; and one said, *Damme, he has Armour on, cut his Throat*; and immediately one of them gave me several Cuts on the Face, some of the Marks will never be effac'd, and I fear I shall never wholly recover the Damage receiv'd by the Bruises: By a Candle in a Window, and by a Link-Boy coming by, I again saw the Face of the Prisoner; then the Cloak being pull'd off, I cry'd out, and People, came who carry'd me to the *Sugar-Loaf*, and from thence to my Lodging, and sent for a Surgeon; they laugh'd aloud all the Time they were abusing me, and when they went away, one of them said, *Now, you Dog, pray for, or, pray again for the Soul of Captain Evans*; and tho' one Man, both in Face and Voice, may be like

another, I do (on my Oath and Conscience) believe the Prisoner to be one of them.

Giles. Mr. *Arnold* knew me in *Monmouthshire* as well as any Man.

Arnold. I might often see him at Assizes and Sessions, but not know his Person or Name.

Giles. That's strange, since my Wife's nearly related to you both by Father and Mother.

Arnold. She may be so, but I don't know it.

Stephen Phillips was sworn.

He depos'd, That at stating some Accompts betwixt the Defendant *Giles* and Mr. *Richmond*, *Giles* said he had made Haste thro' *Gloucestershire*, lest he shou'd be stopt on Suspicion of Mr. *Arnold's* Business.

George Richmond was sworn, and depos'd, He heard *Giles*, at the same Time, being the 5th of *May*, speak Words to the same Effect.

Walter Povel was sworn.

He depos'd, That on the 5th of *May* last, he went with Mr. *Giles* to the Shop of one *Peter Darcy*, a Sword-Cutler, at *Uske* in *Monmouthshire*, and *Giles* desiring *Darcy* to mend his Sword, *Darcy* ask'd if he had been fighting with the Devil, no (says *Giles*) with damn'd *Arnold*; That *Darcy* said he must not speak such Words, and that *Giles's* Wife (pulling him by the Coat) bid him hold his Tongue; and he thought the Apprentice was by.

William Richmond was sworn.

Richmond. The Afternoon before Mr. *Arnold* was wounded, *Giles* ask'd me where he might buy a good Rapier; I said, I knew not, but he had a good Back-Sword then in the House.

Mr. Gibbs. Give an Account of his Acquaintance with *Lewis* the Jesuit.

Richmond. *Giles* said he wou'd persuade the Executioner not to execute *Lewis*: I saw him dip Cloaths in *Lewis's* Blood at the Execution.

Mr. Thompson. Relate the Time of his coming to his Lodging.

Richmond. We went that Day to Mr. *Philpot's* in *Long-Lane*, from thence into *Whetstone's* Park, then to the *Helmet* in *Drury-Lane*, and then to the

Peacock,

Peacock, where we met *Elizabeth Edwards*, one *Powel*, and another; we staid there till about eight or nine, and then went to our Inn, the *King's-Arms* in *St. Martin's-Lane*; I left *Giles* by the Kitchen Fire, and went to drink in my Chamber; about Twelve I saw the Maid making his Bed, but heard no more of him till about One a-Clock he call'd at my Chamber Door, and bid me good Night.

Mr. Thompson. Pray, *Mr. Arnold*, give an Account of *Giles's* Examination.

Arnold. He confess'd he was at his Lodging at Ten a-Clock, and I heard him acknowledge this Examination.

Giles. I said, I went to Bed then.

Mr. Holt. We will now give an Account of his Principles.

— *Bridges* depos'd, That about a Twelve-Month ago *Giles* said the Popish Religion was the best, and he that was not of it wou'd be damn'd, and that whoever affirm'd the Plot against the King and Government was a Rogue and a Thief.

Giles. Was not this on your charging me to be a Papist? I said, I knew of no Plot, and they that said I was a Papist, or knew any thing of the Plot, were Rogues or Whores.

Then *Bridges* repeated the Words again that he mention'd before, and said, those were the very Words.

Walter Moor depos'd, That *Giles* said, if the Lords in the Tower were executed, there wou'd be a greater War than ever was in *England*, and 'twould cost more Blood than ever was spilt; and said, there was no Plot.

Mr. Reynold depos'd, That at *Langoone* in *Monmouthshire*, on the 2d of *May*, he heard *Giles* say, he thought *Mr. Arnold* wounded himself; and his Wife asking how he cou'd wound himself in his Arms, he reply'd, 'twas himself or some of his Friends.

Mr. Hobbs depos'd, That he saw *Mr. Arnold* with two Wounds on his Arm, two on his Face, one on the Throat, which bled very much, two on the Breast, and one in the Belly; that one of

Page 541.

those on the Breast was two Inches and an half long, but neither of them very deep, but that in the Belly was the Depth of six Inches and an half, and that he believ'd a Man cou'd not so wound himself.

[More Witnesses attended, but the Council did not press their Examination, the Evidence being so full and the Court in Haste.]

Giles's Defence.

Then Mr. *Darnal*, Council for the Prisoner, enter'd upon his Defence, and said, That tho' the Evidence against him was very strong, he did not doubt producing substantial Witnesses to prove him innocent of the Fact: And call'd Mr. *Philpot*.

Philpot depos'd, That he was in Company and drinking with *Giles* when Mr. *Phillips* came in, and afterwards, some other Persons coming, ask'd, What News? That *Giles* answer'd, That he knew of none but a cruel Assassination of Mr. *Arnold*, that he was sorry for it, and 'twas strange such a Thing shou'd be. That he was there all the Time, and heard nothing of *Damn him or sink him*, for the Deponent hated such Company.

Herbert Jones, Mayor of *Monmouth*.

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Jones depos'd, That *Giles* and he went out of Town, to *Gloucester*, together; that they staid at the *Old Bear* in *Gloucester*, where being at Dinner, and (the Quarter Sessions being held there at that Time) several People came to them to hear News concerning Mr. *Arnold*; that they were as sorry as any Persons for it, and said, that 'twas a very ill Thing; that they went from thence to the *New Bear*, and drank several Pints of Cyder, and were several Hours in the Town: He farther depos'd, That Mr. *Giles* was chief Constable, and (as such) Mr. *Arnold*, being a Justice of Peace, must certainly know him; that *Giles* was always a Protestant, and he had seen him at Church within half a Year. And *Giles* offer'd to produce a Certificate of his being at Church since he came to Town; and said, he had taken the Oaths of Allegiance and Supremacy.

John

John Jones, the Cutler's Apprentice.

Jones depos'd, That *Giles* came one Morning and bid him give that Sword to his Master to be mended; that when he came again, in the Afternoon, to see if 'twas done, (*Walter Powel* being in the Shop) his Master ask'd, if he had been fighting with the Devil? No, (said *Giles*) I never met with *Arnold*: He farther said, that his Wife did not bid him hold his Tongue, nor there was no other Discourse of *Arnold* as he heard.

John Howell, Servant to Mr. *Richmond*.

He depos'd, That *Giles* and he came to Town together about Twelve a-Clock that Day Mr. *Arnold* was wounded, that he left *Giles* about Nine at Night, and went into the Chamber with his Master, where they drank two Pints of Brandy, and heard no more of *Giles* till about Eleven or Twelve a-Clock, that he bid his Master Good Night.

Anne Beron.

She depos'd, She was with *Giles* and other Neighbours, on *Thursday* in *Easter Week*, at the *Peacock* in *Covent-Garden*, and continu'd with him all the Time till between Nine and Ten at Night, when she left him taking a Pipe of Tobacco at his Inn.

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Elizabeth Crook, Servant of the Inn.

She depos'd, That she made his Bed about Ten a-Clock, and he went to Bed betwixt Ten and Eleven; that he said, he wou'd put out the Candle himself, but she might lock him in and take the Key.

Mr. *Recorder*. Did *Richmond* come in while you were making the Bed?

Crook. He was not there that I know of.

[Then *Richmond* said, He follow'd her in, pretending Courtship, and that she told him, tho' the House was very full, *Giles* wou'd lie by himself; at which she said, she remember'd he was there.]

[Then Mr. *Arnold* laughing, the Prisoner observ'd, 'twas Gentleman-like to make Sport at his Witnesses.]

King's

The TRIAL of

King's Council. What Time of Night did he make Love to you.

[Here *Richmond* and the Maid had some passionate Words in the Court ; one saying 'twas about 10, and the other about 12 a-Clock.

Edward James.

James depos'd, That he din'd with *Giles* at the *Peacock*, and was afterwards with him at the Inn, from 9 a-Clock 'till 12, and then left him in the Kitchen.

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Robin Gibbon, the Hostler.

He depos'd, That he gave Mr. *Giles*'s Horse half a Peck of Oats about 10 a-Clock, but knew not when he went to Bed.

John Chadwick.

Chadwick. *Giles* was at my House between Eight and Nine a-Clock that Night.

Elizabeth Crook.

She depos'd, She went Home with the Prisoner between Nine and Ten, saw him in his Lodging then, and again the next Morning.

[Here the Recorder again questioning *James* and *Crook* : *James* said, he was certain he left *Giles* in the Kitchen at Twelve.

Peter Powell.

He depos'd, That on *Easter-Thursday* he was in Company with *Giles* 'till near Nine at Night, but then parted, and saw him not afterwards.

Sir Geo. Jeffries's
Observations on
the Evidence.

Mr. Recorder summ'd up the Evidence, and observ'd, that in Cases of this Nature, the Law had not proportion'd the Punishment to the Crime : He said, That now it was impossible to doubt the Truth of the Popish-Plot : That this was a Piece of Villainy little short of that acted on Sir *E. Godfrey* : But he gave the Jury a Caution, that either what he had said of the Popish-Plot, or of Sir *E. Godfrey*, ought to be look'd upon as Evidence against the Defendant. Then the Recorder repeated the Substance of the Evidence, and observ'd, That *Giles* cou'd give no Account where he was that Night Mr. *Arnold* was wounded, from Nine a-Clock 'till it was near One : And concludes, That the Proof ought to be very strong to convict Men of such an Offence ; tho' they cou'd

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not expect so clear a Proof as in a Matter of Right between Man and Man, and of Things that were transacted in the Face of the Sun.

Then the Jury withdrew; and in about half an Hour return'd, and brought the Prisoner in *Guilty*. After which the Court adjourn'd. *Giles is convicted*

Saturday the 17th of *July*, the Court being set, and *John Giles* brought to the Bar, Judgment was pronounc'd by the Recorder, *viz.*

That he shou'd stand in the Pillory in *Lincoln's Inn-Fields*, at *Gray's-Inn*, and at the *May-pole* in the *Strand*, with a Paper signifying his Offence; that he shou'd pay a Fine of 500*l.* and lie in Prison 'till he paid it, and find Sureties for his good Behaviour during Life. *The Judgment.*

The TRYAL of ELIZABETH CELLIER, at the King's Bench Bar, for High-Treason, on the 11th of June, 32 Car. 2, 1680.

Page 547.

THE Indictment set forth, that the said *Elizabeth Cellier*, not having the Fear of God before her Eyes, or weighing the Duty of her Allegiance, &c. did, on the 1st Day of *November*, in the 31st Year of the King, at the Parish of *St. Clement-Danes*, in the County of *Middlesex*, compass and imagine the Death of the King, the Subversion of the Government and Religion established: And to accomplish the said Treason, she did, together with other Traitors unknown, at the Time and Place aforesaid, traitorously assemble, consult, and agree, to depose and murder his Majesty, and introduce the *Romish Religion*: And did then and there contribute, and pay divers great Sums of Money to several Persons unknown, to procure them to kill his Majesty, and introduce the *Romish Religion*: And that in order to conceal the said Treasons, the said *Elizabeth Cellier* did pay and expend several other Sums of Money to divers other Persons unknown, *falsly*

The Indictment for High Treason in conspiring the Death of the King, and endeavouring to throw the Plot upon other People.

falsly to throw and impose the said Treason upon other People, against the Duty of her Allegiance, the King's Peace, &c.

John Gadbury was sworn.

*Gadbury the Con-
juror's Evidence.*
Page 550.

Gadbury depos'd, That Mrs. *Cellier* endeavour'd to bring Sir *Robert Peyton*, and the three Gentlemen that were turn'd out with him, over to the King's Interest, but believ'd she was never concern'd in any Conspiracy against his Majesty: And depos'd farther, That Mrs. *Cellier* had told him, that one *Smith* and one *Philips* were willing to discover something against *Otes* and *Bedloe*, on which he acquainted her, that *Smith* had inform'd him, (the Deponent) he cou'd say enough to invalidate the Evidence of *Otes*: That she reply'd, She car'd not if it cost her 10 Guineas, if he wou'd be honest, and discover the Truth: That the said likewise, *Dangerfield* talk'd of a Non-conformist's Plot, that wou'd take off the Popish-Plot.

L. C. J. Did she speak of any Popish Priests or Jesuits coming over?

Gadbury depos'd, That he believ'd he heard her say, there were more coming over, but did not mention on what Account: That he had no Reason to conceal her Crimes, she having done him a great Prejudice, but wou'd not falsely accuse her; and depos'd, That she was always an Enemy to Plots, and said, she fear'd the Nation wou'd be ruin'd before the Popish Plotters wou'd be destroy'd.

L. C. J. What discourse had you with her in *Westminster Abbey*?

Gadbury depos'd, That passing thro' the Abbey she said, This Place was formerly fill'd with Benedictine Monks, and the Temple with Fryars: What if it shou'd be so again? [Then Serj. *Maynard* whispering, he reply'd, Mr. Serjeant, I am none of the Tribe of 41.]

Page 551.

L. C. J. Did she never ask you any Questions about the King's Life?

Gadbury depos'd, That she did propose the Question, whether the King wou'd live or die? And that (the King being then ill) she fear'd he

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he wou'd die, and expected a fatisfactory Answer from the Consultation of his Art; but on his saying he wou'd not inform her because 'twas his Sovereign; she said she wou'd go to another Astrologer: That he had sometimes resolv'd her Questions of the Prosperity of Persons in the World, and other indifferent Matters, but wou'd not meddle with this: He farther depos'd, That she once ask'd him how to get *Dangerfield* out of Prison, and somewhat relating to Papers or Deeds that concern'd *Bedloe*, which *Dangerfield* was to seize or search for.

L. C. J. Did you any Thing for her at that Time?

Gadbury depos'd, That she brought him a Nativity, for which he erected a Scheme, to know if he were a Person to be trusted; that he then knew not for whom 'twas design'd, but has since understood 'twas for *Dangerfield*, whose Person or Name was unknown to him, 'till he came before the King and Council, for that he before pass'd by the Name of *Willoughby*; and that the Resolution of that Question he had forgot.

L. C. J. Did she at any Time talk of Mr. *Dugdale*?

Page 552.

Gadbury depos'd, That she inform'd him a Woman was to go to *Windsor* to beg *Dugdale's* Pardon, for he repented of the Evidence he had given at some Tryal.

Dangerfield was call'd.

Mrs. *Cellier*. I except against his Testimony, for I can prove him whipt, transported, pillory'd, perjur'd, &c. He threaten'd to kill some of my Witnesses, if they wou'd not swear according to his Directions; and he has been indicted for Burglary. [Which *Dangerfield* (being ask'd) answer'd, he wou'd take it at their Proof.]

Dangerfield call'd
as a Witness a-
gainst her.

Ralph Briscoe was sworn for the Prisoner.

Briscoe depos'd, He saw one *Thomas Dangerfield* burnt in the Hand; and tho' he had not seen him in several Years, believ'd him to be the Man. [Then she said she cou'd prove him perjur'd, but not convicted; and guilty of Forgery, which

wou'd

would not be allow'd as Evidence, unless she produc'd the Record.]

Mr. Recorder. What she calls Forgery is not Forgery in Law, 'tis counterfeiting Guineas.

Mrs. Cellier. I have several Records which will be sworn to. [To which *Dangerfield* pleading his Majesty's Pardon, Mrs. Cellier said, the Pardon did not extend to some Crimes he was convicted of, and produc'd a Record, by which it appear'd, he was outlaw'd upon a Felony, and the Court order'd him to fetch his Pardon.]

Thomas Williamson was sworn.

Williamson depos'd, That Mrs. Cellier had employ'd him in Matters of Charity, to get Prisoners releas'd, and particularly *Dangerfield*, who soever remain'd, but knew not for what Reason.

Maryaret Jenkins was sworn.

She depos'd, That she never saw Mrs. Cellier and *Dangerfield* more than twice together; That once at *Parris*'s House they discours'd concerning the Prisoners, but nothing about the Plot.

Susan Edwards was sworn.

She depos'd, That she had often seen them together, and heard the Prisoner say, That the Popish Plot would turn to a Presbyterian Plot; and that *Dangerfield* said, he would make it his Interest it should be so; and that he thought he should be hang'd if he did not turn Rogue; and that she (the Deponent) told him, he'd be no greater Rogue than before: And farther depos'd, That (the Prisoner saying, She would do the Deponent's Business for her) she went in Danger of her Life.

Benner Dowdal was sworn.

He depos'd, Mrs. Cellier propos'd a Match for him; and that she and *Dangerfield* us'd to discourse of that to him, but never concerning the King or the Plot.

[Then Copies of Records being read of his standing on the Pillory at *Salisbury*, for uttering false Guineas, and of an Outlawry for Felony, Mr. Recorder said, 'twas not the same Person.]

L. C. J. Capt. *Richardson*, is this the Man that broke *Chelmsford* Goal.

Richardson.

Several Records
of Convictions
for Felony pro-
duc'd against
Dangerfield.

Richardson. He was brought from thence by *Habeas Corpus*; and, I believe, has been burnt in the Hand for Felony. [Then my Lord himself objected against his Evidence.]

[*Dangerfield* return'd, and his Pardon being read, instead of *Utlagaria qualiacunque pro Feloniis quibuscunque*, was only inserted *Omnia Maleficia & Utlagaria qualiacunque*; and 'twas my Lord Chief Justice's Opinion, *Utlagaria* reach'd only to Outlawries, between Party and Party; and gave *Dangerfield* a very severe Reprimand in open Court.]

Dangerfield's Pardon adjudg'd defective by the Court, as to the Outlawry for Felony.

Then the Lord Chief Justice said to the Jury, That there was but one Witness, and that not direct, which was not sufficient in a Case of Treason; and the Jury brought her in *Not Guilty*; and then my Lord committed *Dangerfield*, for want of Sureties for his good Behaviour.

Mrs. Cellier is acquitted.

The TRIAL of HENRY CARR, on an Information for publishing a false and scandalous Libel; at Guild-hall London, the 2d of July, 1680.

Page 555.

THE Information was brought in the Crown-Office in *Hillary Term* 1679, and set forth, That whereas there had been a Plot and traitorous Conspiracy against his Majesty, and the Government, and the Religion establish'd, of which Treason divers Traitors had been convicted and attainted, The said *Henry Carr*, well knowing the Premises, and maliciously intending to scandalize and bring into Contempt the Justice of the Kingdom, did, on the 1st of *August*, in the 31st Year of the King, at the Parish of *St. Sepulchre's, London*, print, and cause to be publish'd, a scandalous Book, intituled, *The Weekly Packet of Advice from Rome*. In which are the following Expressions: 'There is lately found out by an experienc'd Physician, an incomparable Medicament, call'd the Wonder-working Plaister, truly Catholick in Operation, somewhat of Kin to the Jesuits Powder,

Information for printing and publishing a Libel reflecting on the Justice of the Nation.

Powder, but more effectual. The Vertues
 of it are strange and various: It will make
 Justice deaf as well as blind; takes Spots out of
 deepest Treasons, more cleverly than *Castle-Soap*
 does common Stains: It alters a Man's Consti-
 tution in two or three Days, more than the
 Vertuoso's Transfusion of Blood in seven Years:
 Is a Great Alexipharmick, and helps Poisons,
 and those that use 'em: It miraculously exalts
 and purifies the Eye-sight, and makes People
 behold nothing but Innocence in the blackest
 Malefactors: It is a mighty Cordial in a decli-
 ning Cause, stifles a Plot, as certainly as the
 Itch is destroy'd by Butter and Brimstone: It
 makes Fools wise Men, and wise Men Fools,
 and both of them Knaves. The Colour of this
 precious Balm is bright and dazzling; and being
 apply'd privately to the Fist in decent Manner,
 and a competent Dose, infallibly performs all the
 said Cures, and many others, to the great Con-
 tempt of the King, the Scandal of the Govern-
 ment, and the Administration of Justice, &c.

The Printer's
Evidence.

Stevens was sworn.

He depos'd, That he printed the Book; and
 had several of the Original Papers from Mr. Carr;
 and did not remember he had any from any other
 Person, than from him or his Order.

Page 556.

Mr. Williams. Did he bring them in Writing?
 And have you any to show?

Stevens. They came in Writing; but we did
 not regard 'em when they were printed.

Mr. Williams. Had you ever a Paper from
Carr's own Hand?

Stevens. We had few from his own Hand.

L. C. J. Had you any? Upon your Oath, had
 you one or two?

Stevens. I can't remember. I can't say, upon my
 Oath, he ever brought one.

L. C. J. How came you to say you had several
 from him?

Stevens. Ay, from him; that is, from him or
 his Order.

L. C. J.

L. C. J. Had he any Money for these Papers ?

Stevens. I have heard so. I suppose he has had Money of *Curtis* the Publisher.

L. C. J. Did *Carr* ever own to you, that he was Author of this Book, or any of these Papers ?

Stevens. I never ask'd him. I took it for granted.

L. C. J. Did he ever own it ?

Stevens. I have heard him deny it.

L. C. J. Why shou'd you take it for granted, when he has deny'd, and never own'd it ?

Stevens. I don't say he never own'd it.

L. C. J. What Tricks we have in the World ! Did he treat with you as if he were the Author ?

Stevens. Yes I grant that : I suppo'd him to be the Author.

Williams. Who brought you the Writing by which the Book was printed ?

Stevens. Mr. *Carr*'s Boy brought them ; and I do not remember that any other Person brought any.

L. C. J. Who gave Directions for the printing it ?

Stevens. The Publisher : *Curtis* chiefly. Mr. *Carr* did not deal immediately with me.

Page 57.

L. C. J. Did you ever blame *Carr* for writing too sharply in this Book against the Government ? And what Answer hath he made ? Did he deny that he did it ?

Stevens. I have blam'd him for it ; but do not remember that *Carr* at that Time deny'd his being the Author, or what Answer he made.

L. C. J. Has he deny'd being Author of this particular Book ; or of that Book in general, call'd, *The Packet of Advice* ?

Stevens. I have heard him say, sometimes, that he was not the Author.

Mr. Recorder. And sometimes what ?

Stevens. I have heard him say, sometime or other, that he was not the Author.

The Printer's Servant was sworn.

He depos'd, That he cou'd not speak to any one particular Packet, but that he fetch'd some in in Pieces, (no whole Sheets) from Mr. *Carr*'s own

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P

Hand ;

The TRIAL of

Hands; and that Mr. Carr's Boy brought some, but could not say, Mr. Carr, or any other Person, brought any; that being but a Servant, he knew not who directed the Printing of 'em, but understood they came from Mr. Carr; and that the Papers so brought, (to the best of his Knowledge) were never printed before.

L. C. J. Read the Words of the Information.

Clerk. *Friday* the 1st of *August*, 1679, There is lately found by an experienc'd Physician, &c.

The Prisoner's
Defence.

The Prisoner's Council insisted, That Mr. Carr was a Satyrift against Popery, and his Packets, 'till this Fault, were very well lik'd: That in his writing, an extravagant Flight might slip from him, without any Ill; and that if he was a good Subject and a good Church-man, one that lov'd the Government in Church and State, he could not be thought guilty of Malice; and such a one they shou'd prove him to be.

His Witnesses
call'd.

Mr. Sutton, Mr. Alyffe, and Mr. Ambler, were call'd, and appear'd.

Page 559.

Sutton depos'd, That he had known Mr. Carr for two or three Years, and had been with him at Church, but never saw him receive the Sacrament: That Mr. Carr had sometimes disown'd his being the Author of the Packet, and he did not think him capable of writing such a Book; but depos'd farther, 'Twas something like Carr's Writing, and apprehended, by his Discourse, he might write it.

Mr. Ambler depos'd, That he had known Mr. Carr three Years, and had been with him at Church; that he never discours'd him about the Packet of Advice, but had heard of the Book, and that Mr. Carr was commonly reported to be the Author of it.

Mr. Alyffe depos'd, That he knew Mr. Carr, and had seen him at Church, and that he carry'd himself reverently during the Time of Divine Service; but that the Deponent never ask'd him if he wrote that Book.

Sir Francis Winnington urg'd, That the Defendant was not prov'd the Author of that individual Paper in the Information.

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assemble,

The Lord Chief Justice, in his Direction to the Jury, said, That he at first took this to be a Cause of small Moment; but was now convinc'd by the Noise and Shouts of the Audience, during the Tryal, that 'twas a Party Business; and told the People, he observ'd they were more free of their Acclamations than they were of their Purses; for though they espous'd and applauded him before he was in Distress, and would lay out Money for a treasonable Pamphlet, when they refus'd it their Children to buy Bread; yet, if he come to be imprison'd for a *Penal Sum*, they would all forsake him as they had done *Curtis*, and no one would contribute any Thing, but leave him to rot in a Goal: And told the Jury, That it did not concern them whether the Prisoner was malicious or not malicious, they were only to try whether he were Publisher of the Book; and if they found him Guilty, he would judge whether it imported Malice or not.

The Chief Justice directs the Jury.

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Page 561.

Then the Jury withdrew to consider of their Verdict; and, after near an Hour's Recess, brought the Prisoner in Guilty. Whereupon the Chief Justice and the Recorder commended the Verdict.

The Prisoner is convicted.

The TRYALS of THOMAS THWYNG and MARY PRESSICKS, at York Assizes, for High Treason, on the 29th of July, 32. Car. 2. 1680.

Page 562.

THE Indictment set forth, That the present *Thomas Thwyng*, Clerk, and *Mary Pressicks*, Wife of *Thomas Pressicks*, not weighing the Duty of their Allegiance, &c. did, on the 30th of *May*, in the 31st Year of the King, at the Parish of *Elmest*, in the County of *York*, traitorously compass and imagine the Death of the King, and the Subversion of the Government and the Protestant Religion: And to accomplish their said Treasons, the Prisoners, together with other false Traitors, did, at the Time and Place aforesaid, assemble, consult, and agree, to depose and murder

The Indictment for High Treason, in conspiring the Death of the King and the Subversion of our Religion and Government

his Majesty, and introduce the Romish Religion: And that the sooner to effect the same, they did expend and pay to divers other Traitors, to the Jurors unknown, several Sums of Money to carry on the said Treasons: And that the Prisoners did then and there subscribe a Note, to contribute divers Sums for compleating their said traitorous Designs; against the Duty of their Allegiance, the King's Peace, &c.

The Prisoners having been arraign'd, and pleaded Not Guilty to the Indictment, a Jury was sworn; after which the King's Witnesses were call'd, and, first,

Mr. Bolron was sworn.

Page 163.
Bolron's Evidence
of the Prisoners
Concern in the
Plot.

Bolron depos'd, That in 1674, he was Steward of Sir Thomas Gascoigne's Coal-Pits; and in 1675 he turn'd Papist; and that about January 1676, Father *Rushion*, his Confessor, with Mr. *Tkwyng*, and several others, came to the Deponent's House, and ask'd him how he stood affected to the Roman Catholick Religion; and (if there were Occasion) if he wou'd venture his Life and Estate in it? To which the Deponent agreeing, (being resolv'd to obey his ghostly Father in all Things) *Rushion* gave him the Oath of Secrecy: And that in 1677, Sir Thomas Gascoigne, Sir Miles Stapleton, my Lady Tempest, Mr. *Rushion*, Mr. *Tkwyng*, and several others, met in the old Dining-Room in *Barnlow-Hall*, (Sir Thomas Gascoigne's House) and there they agreed that the King shou'd be kill'd; and that Mr. *Tkwyng* said, if they mis'd this Opportunity, they shou'd never have the like again; and that the effecting it wou'd be very beneficial to the Church of Rome: And farther depos'd, That they then and there likewise agreed to erect a Nunnery at *Doibanck*, after the King was kill'd; and that my Lady Tempest offer'd them *Broughton* for the present, and *Tkwyng* was to be Confessor of the Nunnery: He depos'd also, That he pay'd 10 l. to Mr. *Rushion*, in *Tkwyng's* Presence, towards killing the King; and saw a List in *Rushion's* and *Tkwyng's* Hands, entitled, *A List of the Names of the Actors and Contributors engag'd in the Design of promoting the*
Roman

Roman Catholick Religion; and also of establishing a Nunnery: By which was meant, raising Money for killing the King: That the Deponent paid 5*l.* besides the aforesaid 10*l.* to have his Soul pray'd for; and *Thwyng* told this Deponent afterwards, that 30000*l.* was rais'd in *Yorkshire, Lancashire, and Derbyshire*, for killing the King; and the List, or Particulars, was sent beyond Sea.

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He depos'd farther, That in 1678, discoursing *Mrs. Pressicks* at his own House about the Plot that was just discover'd, she said, Father *Harcourt*, her Confessor, first engag'd her in it; and that she said also, that *Pickering* told her, he was to have kill'd the King, and she was sorry he did not do it; and that she believ'd the Gun with which *Pickering* was to have kill'd the King, being found with him, was the Cause of his Execution: And that she said, the King was an Ass, and not fit to govern; for what Money the Parliament gave him, he spent upon Whores and Concubines.

Mr. Monbray was sworn.

Sir Tho. Stringer. Come, *Mr. Monbray*, tell your Knowledge.

*Monbray's Evid.
d. i. c. c. gainst
Thwyng.*

Monbray. Near *Michaelmas* 1676, Father *Rushton, Addison, Thwyng*, and other Priests, met at *Rushton's* Chamber, and there agreed to kill the King, because he had not kept his Promise made to the Jesuits beyond Sea, to bring in their Religion: They also declar'd, That *York* and *London* were to be fir'd; and that Force was to be used against the King, and all other Hereticks, that oppos'd the Advancement of their Religion. They said, 'twas not only lawful, but meritorious to do it. There was a List of those engag'd in the Design; and *Rushton* and *Thwyng* were the Managers of it.

Sir Tho. Stringer. How came you to be trusted in so great a Business?

Monbray. By assisting at Mass, I came into *Rushton's* Favour: I took the Oath of Secrecy from him, and was permitted to be in the Chamber when the Priests were private with him.

Thwyng. How long since did you change your Religion?

Monbray. Presently after the Plot broke out.

Mr. J. Dolben. Well, what say you to *Mary Pressicks*?

Monbray. My Lord, I have nothing to say against her.

Mrs. Bolron, Sen. Mrs. Bolron, Jun. and John Hutchinson, call'd against *Pressicks*.

Mrs. Bolron, Sen. was sworn.

Page 565.

Mrs. Bolron depos'd, That *Mrs. Pressicks* said several Times at *Shippen*, that she knew of the Plot, and said, that *Pickering* was to have kill'd the King, and she (*Mrs. Pressicks*) was sorry he did not do it; and that it had been done, but for *Otes* and *Bedlow*; and that *Mrs. Pressicks* said likewise, there wou'd be no Quiet in *England* 'till the Roman Catholicks got the Upper-hand; and there was not a Protestant left in *England*; and said, the King spent his Money among Concubines, and was not worthy to be a King; and that she (*Mrs. Pressicks*) hoped an Army of Catholicks wou'd be rais'd to set up Popery.

Mrs. Bolron, Jun. was sworn.

She depos'd, That about *Candlemas* 1678, and at *Easter* and *Whitsontide*, and several Times after the Plot was discover'd, she heard *Mrs. Pressicks* say, at the Porch in her Husband's House, That there was a great Conspiracy carrying on, to alter the Government, and establish the Romish Religion; and that her Grandmother was then present.

John Hutchinson was sworn.

He depos'd, That being in *Bolron's* Kitchen, *Mrs. Pressicks* ask'd the Deponent, What News in his Country, and what became of the Papists? And that on the Deponent's saying, Some had given Bond, and some were gone to Prison, *Mrs. Pressicks* reply'd, We shall never be at Peace, 'till we are all of the Roman Catholick Religion; for the King is an Heretick, and spends more Money on his Whores, than on his Queen; and that at the Hall Door, going into the Parlour, she told the Deponent, we shou'd never be at Ease 'till the Duke of *York* was made King,

Mr.

Mr. J. Dolben. Mr. Bolron, when came she to your House?

Bolron. About *Christmas*, and staid there about six Months.

Mr. Dolben. Did you charge Mr. Thwyng before the Justice?

Bolron. I only gave Justice Tindal an Account, that Sir *Thomas Gascoigne* promis'd me 1000*l.* to kill the King; but gave my Information against *Thwyng* before the King and Council.

Thwyng. My Lord, this is Malice to Sir *Tho. Gascoigne's* Family, to which I am related: 'Tis out of Revenge, I can prove it by several Witnesses.

Nathaniel Wilson examin'd for *Thwyng*.

He depos'd, That about *Michaelmas* last, *Bolron* ask'd him if he knew any Thing of Father *Rushion*; and on his answering No, *Bolron* bid him (the Depo-
nent) keep his Secrets, and he wou'd give him more than he cou'd addle [earn] in seven Years; and said, unless he (*Bolron*) cou'd shed the Blood of some of them, he shou'd get nothing.

Thwyng calls his
Witness to prove
Bolron's Malice.

Thwyng. I desire to know if *Bolron* nam'd me, as a Plotter, to Mr. *Lomther*.

Mr. *Lomther*. About the 24th or 25th of *June*, 1679, *Bolron* came and told me he had some Secrets to impart, and began to acquaint me what the Jesuits and Priests design'd against the Govern-
ment, because the King did not keep the Promise he had made them beyond Sea. I call'd for a Bible to take his Examination; and, on my advising him to be careful, for his own Concern (as well as the Lives and Fortunes of the Gentlemen he ac-
cus'd) was at Stake, he was timorous, and look'd pale; and I ask'd him the Reason of his Fear; and he said, the Reason was, because he had con-
ceal'd it so long, and if the same was on me, it might make me as fearful as himself; and told me he had given his Information before Mr. *Tindal*; and that Mr. *Tindal* desir'd him to acquaint me. I told him, I shou'd meet Mr. *Tindal* the Morrow, and then we wou'd take it jointly. I don't re-
member he mention'd Mr. *Thwyng*, but said he

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Page 566.

shou'd recollect more, and wou'd give it in to the King and Council.

Obadiab Moor was call'd.

He depos'd, that about *Candlemas* was Twelve-Months, *Bolron* said, neither *Sir Thomas Gascoigne*, nor any of his Family, were concern'd in the Plot; and that *Bolron* said, he believ'd there was no Plot.

Mr. J. Dolben. He was then a Papist; but did not he tell you otherwise afterwards?

Moor. In *August* after, he said he had but equivocated, and that there was a real Plot; and if he had sworn a thousand Lies, he cou'd have been forgiven 'em.

Stephen Thompson was call'd.

Thompson depos'd, That he was bound with *Bolron* to *Sir Thomas Gascoigne* for 60 l. and imagin'd *Bolron*, being his Servant, might know if *Sir Thomas* was concern'd in the Plot, and then there was no Fear of being su'd: That the Deponent enquir'd of *Bolron*, who answer'd, *Sir Thomas* was as sinless of it as the Child that was unborn. He depos'd farther, That on *Holy Thursday* *Bolron* told him, if *Sir Thomas* su'd him, he wou'd do him a greater Mischief: That *Sir Thomas* was earnest for his Money, but the Deponent prevail'd with him to stay three Weeks, that *Bolron* might go sell his House at *Newcastle*; but that in the mean Time *Bolron* went to *London*, and accus'd *Sir Thomas* of Treason; and as to *Mrs. Pressicks*, he depos'd, That old *Mrs. Bolron* told him she cou'd say nothing against her, but *Bolron* said she must do it.

Zachary Thorp was call'd.

He depos'd, That before the last Assizes, *Bolron* (telling him that *Sir Thomas Gascoigne* was clear'd) said, *God damn the Jury, they were Rogues*; and that he likewise (telling the Deponent he was to go to the *Tork* Assizes against my *Lady Tempest*) said, *God damn me, I will ruin 'em; if one Thing will not do, another shall*.

Mr. J. Dolben. What are you? *God damn me* comes very nimbly out of your Mouth.

Thorp.

Thorpe. I marry'd the Gentleman's Daughter at the *Whitehart* in *Charterhouse Lane*, and live there.

Mr. J. Dolben. And draw Pots of Ale? Your Father-in-Law's a poor Alehouse-keeper.

Mr. Baron Atkins. Are not you a Papist?

Thorpe. No, my Lord, a Protestant of the Church of *England*. Then he depos'd farther, That *Bolron* offer'd to do any Thing for the Deponent, if he wou'd swear *Peter Shipton* knew no Harm by *Bolron*; and that *Bolron* said, I have taken his Bond, but I will have him from Court to Court; I will teach him to meddle with me.

Mr. J. Dolben. It's a Wonder he shou'd discover such Things to one he has small Acquaintance with. Page 567.

William Hardwick was call'd.

He depos'd, That he being to carry *Mrs. Pressicks* before the Justice, *Bolron's* Wife said, 'he was sorry, for she thought her an honest Woman, and had been a good Neighbour.

Mary Walker was call'd.

She depos'd, That being Servant to *Mrs. Lassels*, (*Thwyng's* Sister) *Bolron* offer'd the Deponent 10*l*. if she wou'd swear *Mr. Thwyng* was a Priest; and said, he wou'd be reveng'd of him, because he was near of Kin to *Sir Thomas Gascoigne*; and that she had two Witnesses to prove what she said.

[*Mr. J. Dolben* observ'd, It was the more improbable, that he shou'd offer it before two Witnesses: And *Sir Thomas Stringer* asking if she was a Papist, and whether *Thwyng* was a Priest? She said, she was a Catholick, but *Thwyng* no Priest.]

Mr. Legget, a King's Messenger, examin'd.

He depos'd, That in *August* last, in the Presence of the Deponent, *Bolron* ask'd his Grandmother if she did not say such and such Things? Who answer'd, She knew not; if she did, 'twas true; and that *Bolron* said afterwards, You thought my Grandmother knew nothing; but at *Sir Thomas Gascoigne's*, they said, they never heard one swear a Thing more plain.

William Bacchus was call'd.

He depos'd, That *Bolron's* Wife and Grandmother said, they knew nothing against *Sir Thomas Gascoigne*,

coigne, or any of his Family, but that they told the Deponent, that *Mary Pressicks* said the King was a Whore-Master, and maintain'd his Whores better than he did the Queen.

Cubbert Hamsworth was call'd.

He depos'd, *Bolton* swore Revenge against my Lady *Tempest*, but said nothing relating to the Prisoners.

Thwyng. My Lord, I have Witnesses to prove I was not at *Barnlow-Hall* in 1677, as he swears I was.

George Twissley, Sir *Thomas's* Groom, was call'd.

Page 368.

He depos'd, That Mr. *Thwyng* never came to *Barnlow-Hall* above once or twice in a Year, and staid not above a Night or two at a Time; that *Thwyng* was there a Month before *Michaelmas*, but not at *Easter*, and no Company was there then, for he never was absent; and that he, the Deponent, was now a Protestant.

Thomas Arden was call'd, but had nothing to say, having never seen *Thwyng* before.

Joseph Cooper was call'd.

He depos'd, That about twelve Months ago, on the Road, coming from *Aldberson Fair*, *Monbray* said, he knew nothing of the Plot, and he thought Sir *Thomas* did not, for if he had, *Monbray* shou'd have known it as soon as *Bolton*; and said, *Bolton* was a Rogue and a Knave for saying it.

Edward Cooper was call'd.

He depos'd, That coming from *Aldberson Fair* he met *Monbray*, who said, he believ'd Sir *Thomas* was not guilty of the Plot.

Thwyng. Mr. *Monbray* declar'd, for eight or ten Months together, in 77, he knew nothing of the Plot.

Isabel Hayward, a Girl, who liv'd with *Bolton*, was call'd.

She depos'd, *Bolton* and his Wife differing about going to *London*, her Mistress said, if he made her go, she wou'd swear that what he had sworn against Mrs. *Pressicks* was out of Malice.

Alice

Alice Dawson was examin'd.

She depos'd, That *Mrs. Bolron* said, about a Year and half since, she was sorry her Husband had meddled with *Mrs. Pressicks*.

Mrs. Pressicks call'd *John Pepper*.

He depos'd, That he carry'd *Mrs. Pressicks* from *Bolron's*, on *Whitson-Monday*, to *Mrs. Harrison's* at *Parlington*, and they staid there till *Thursday*.

Page 569.

Mr. Babbington was call'd.

He depos'd, That *Bo'ron* said, *Mr. Pressicks* and and his Wife were his Enemies, and perswaded *Sir Thomas* to sue him.

Mr. J. Dolben, in his Directions to the Jury, observ'd, That the Evidence against the Prisoners was very different: That as to *Mrs. Pressicks*, there was no Evidence but of what they had heard her say others were to do; nor did it appear she was privy even to that, but that she might have it by common Report: And as to her saying she was sorry *Pickering* did not kill the King, and that it wou'd never be well with *England* till the *Catholicks* had the upper-hand, he did not think such Words amounted to Treason. — That as to *Thwyng*, there were two positive Witnesses against him; and that his Defence consisted in invalidating the Testimony of those two Witnesses, and as to that, he directed the Jury to consider the Credit of those the Prisoner had produc'd, and if it did appear to them that *Bolron* and *Montray* did swear against him maliciously, because he was related to *Sir Thomas Gascoigne's* Family, (which the Judge intimated he was of Opinion they did not) then they should acquit him.

Mr. J. Dolben directs the Jury.

Words, unless they discover a Design to do some Act, not treasonable.

Page 570.

Mr. Baron Atkins said, he thought that what *Bolron* depos'd against *Mary Pressicks*, (*viz.*) That she told him, that Father *Harcourt*, her Confessor, first engag'd her in the Plot, and was some Evidence of High Treason: But as to *Thwyng*, there were two positive Witnesses against him, and he did not seem to credit those Witnesses that were produc'd by *Thwyng* to shew it was a malicious Prosecution,

Mr. Baron Atkins also directs the Jury.

Then

Thwyng convicted.
 Preflick's acquitted.

Page 571.
 Sentence pass'd
 on Thwyng.
 He is executed.

Then the Jury withdrew, and after some Time, return'd, and brought *Thomas Thwyng* in Guilty, and *Mary Preflick* in Not Guilty.

After which, Sentence was pronounc'd against *Thwyng* as a Traitor: He was repriev'd till the 23d of *October*, and then executed.

Page 572.

The TRYAL of Mrs. ELIZ. CELLIER, for a Libel, at the Old Baily, the 11th Day of September, 32. Car. 2. 1680.

The Indictment.

THE Indictment sets forth, That *Elizabeth Cellier*, Wife of *Peter Cellier*, of the Parish of *St. Clement's Dances* in the County of *Middlesex*, Gentlewoman, being of the Popish Religion, and not having the Fear of God before her Eyes, &c. and endeavouring to bring into Hatred and Contempt his present Majesty, and the Religion and Government establish'd; and to bring Scandal and Infamy upon divers Persons, produc'd as Witnesses, on behalf of the King, against her the said *Elizabeth Cellier*, and other Persons, who had been indicted of High Treason; the first Day of *September*, in the 32d Year of the King, at the Parish aforesaid, did, falsely, maliciously, and seditiously, write and publish a scandalous Libel, intituled, *Malice defeated: Or, A brief Relation of the Accusation and Deliverance of Elizabeth Cellier; wherein her Proceedings, both before and during her Confinement, are particularly related, and the Mystery of the Meal-Tub fully discover'd, &c.* Wherein are contain'd these false, feign'd, and scandalous Words and Figures, [Here the several criminal Passages in the Libel are recited.] All which is laid to be of evil Example to others, against the King's Peace, &c.

The King's Counsel having open'd the Indictment, the Witnesses were call'd.

William Downing, *John Penny*, and *Robert Stevens*, were sworn.

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Mr. Baron Weston. Begin with *Penny* first. What say you to that Book?

Penny

Penny depos'd, That he went to Mrs. *Cellier's* (the Prisoner's) House, to buy that Book which he had in his Hand, and had mark'd each Sheet of it; and that asking the Price, she told him two Pence, for she sold 'em to the Shops for eighteen Pence the Dozen; that thereupon she fetch'd him the Book, and acknowledg'd it to be hers, and said, there was another little Sheet to be added to it, and that he gave her two Pence for it.

The Witnesses call'd.

Mrs. Cellier. Did I say otherwise than *this is the Book*, or, *you may have the Book*.

Penny. She said, 'twas her own Book, and if Occasion were, she cou'd have put more in't.

Mr. Baron Weston. You, Yesterday, acknowledg'd you writ every Word of it with your own Hand.

Mrs. Cellier. I hope, my Lord, a foolish Woman's Vanity (of which I knew not the Consequence) shall not be brought as Evidence against me.

Mr. Baron Weston. However, 'tis prov'd against you; it hath your Name in the Title Page, and sold by your self; that's owning and publishing it.

Mrs. Cellier. I have sent for my Witnesses, but can't find 'em; cou'd I produce them, I cou'd make my Defence.

Mr. Baron Weston. For what Reason wou'd you have Witnesses, when you have own'd you writ it your self.

Mrs. Cellier. It's against the Honour of the Bench to take Advantage and give Evidence of my vain Words.

Mr. Baron Weston. 'Tis not so, to repeat what you say: When the Court acquainted you to what Purpose Witnesses might be of Use, you relinquish'd it, and acknowledg'd the Fact.

Mrs. Cellier. I am surpriz'd for want of Witnesses; he only swears I said 'twas mine, not that I was Author, or writ it.

Penny. You said, if 'twas to be writ again, you cou'd put more in it.

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Mrs. Cel-

The TRIAL of

Mrs. Cellier. I said 'twas mine, because in my Custody, as this Fan is mine, tho' I did not make it.

Penny said, That he ask'd her if 'twas her Book, (meaning if she writ it) lest she might give him some other; and likewise ask'd, if he could have more on Occasion, to which she answer'd, I have but four or five Hundred, but shall have more in a few Days.

Downing set up.

Mr. Baron Weston. Pray, look upon that Book, and the Title of it.

Downing. I know it very well, I printed Part of it; about the 22d of August Mrs. Cellier sent for me to her House, and said, she had been unjustly and publickly abus'd, and wou'd publish her Case, and there was nothing in it but Truth, and 'twas no Ways offensive; I believ'd her, and agreed with her to print it at ten Shillings a Rheam, and was to print four Rheams of each Sheet: I printed to Folio 22, about half the Book, and then the Messengers found it at my House, and carry'd it to the Secretary, Sir Leoline Jenkins, by whose Wariant we were both carry'd before him, and after Examination were bound to appear before the Privy Council, and when discharg'd by the Council, were bound to appear in the King's Bench, the first Day of the next Term: She has since printed the other Half somewhere else, and tho' she promis'd to indemnify me from all Charge, yet she oblig'd me to pay the Clerk of the Council's Fees, and said, I had betray'd her.

Mr. Dormer. Who corrected the Sheets?

Downing. They were carry'd to her, and she look'd over them.

Stevens set up.

He depos'd, That seeing this Book printing at Mr. Downing's, and reading some of the Paragraphs, he ask'd Downing if he knew what he did; that Downing answer'd, 'twas a Truth, and said he did it for Mrs. Cellier, who sent him Copies, sometimes by one Messenger and sometimes by another; and Downing said he sent the Sheets to Mrs. Cel-

Mrs. *Cellier*; and depos'd also, that he went to Mrs. *Cellier*, who said, she dictated it to a Man that she kept to write it, and she was the Author; and the Deponent inform'd the Secretary.

Cellier. I never said so in my Life.

Stevens farther depos'd, That (seeing Mrs. *Cellier* write a Note) he said, I perceive (by the Difference betwixt the Note and the Copy) it's not your Hand-writing; and that she then said, she dictated it to a Man that she kept to write it, and that she own'd her self to be the Author before the Secretary, and before the Council, and said she wou'd answer't; and depos'd, she had put out two Sheets since, and had spoke to the Hawkers to come for a new Pamphlet at one a-Clock this Day, and that he had seen her sell several of these Books.

Mr. *Fowler*, of the *Half-Moon* in *Cheapside*, was sworn.

Mr. *Dormer*. Did you buy any of these Books?

Fowler. Being inform'd my Name was in her Book, I went to her House and bought two of 'em.

Cellier. I don't know you, nor ever saw you before.

Fowler. Yet you cou'd put me in your Book.

Cellier. Your Name is not in the Book.

Fowler. There is one *F.* that keeps the *Half-Moon* Tavern in *Ch. St.*

Mr. Attorney. Is what is there suggested of your going to a Man in Prison true?

Fowler. That's clear'd by *Corral* the Coachman's Oath; I also made Oath before my Lord Mayor that I never was there with any great Lord or Duke, nor ever saw such Things, or whisper'd what I am there tax'd with.

Mr. Baron *Weston*. But I come nearer to you: Was *Corral* apprehended for carrying away the dead Body of Sir *Edmundbury Godfrey* at your Accusation.

Fowler. The *Tuesday* Se'night after the Murder of Sir *Edmundbury Godfrey*, this *Corral* was call'd to carry some Gentlemen from my House; and my Wife accidentally saying to him, I believe thou hast

Page 578.
Fowler's Evidence
of what *Corral* the
Coachman told
him concerning
Sir *E. Godfrey*.

hast no Hand in the Plot, the Fellow answer'd, 'twas well he escap'd that Danger, for that four of them met him against St. *Clement's* Church Wall, and swore, Damn them, he shou'd do as they'd have him; and said, he saw Sir *Edmund's* Body in a Chair; that he pretended his Axle-Tree was broke, and cou'd not carry him. I ask'd the Fellow if he was sure of this, and (he repeating the Story) I enquir'd if he drove for himself or another, he (imagining he had said too much) pretended to see if his Coach-Seats were safe; I follow'd with a Candle and took the Number of the Coach, and he drove away; whereupon, the next Day I acquainted Captain *Richardson* of it, and he sent his People abroad, who took and secur'd the Coachman in *Newgate*: The Day after I was order'd to wait on several Lords and the Secretary at *Wallingford-House*, where I depos'd the same I have now done to your Lordships, and the Fellow (confessing the Matter) pretended a Coachman and Mrs. ——— told it him, who, being sent for, were Persons of good Repute; and the Lords (being satisfy'd 'twas a Sham) told the Fellow, if he'd confess, he shou'd be sure of the Gratuity the King had promis'd, but if not, he shou'd be severely punish'd, and was remanded to *Newgate*; but I never was to see him, nor ever was in *Newgate* with any Nobleman except my Lord *Petre* four Years ago.

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Cellier. I didn't write this was true, but that the Fellow told me so.

Mr. Baron Weston. That we will see. Tho' this Examination be not to the present Purpose, it may be satisfactory: Read the Book. [which was done by the Clerk.]

Mr. Baron Weston observ'd the Slander and Infamy this Book cast on the King, the Nobility, and likewise on the whole Nation; and that (if possible) he wou'd have 'em produce *Prance* and the Coachman to testify their Usage, and confute that publick Calumny; and assur'd *Mrs. Cellier* that the Protestants were better Subjects, and far greater Sufferers for their Loyalty, than any Papists whatever, tho' she insinuated the contrary.

Cellier.

Cellier. I say, *that call'd themselves Protestants*; I'm sensible the Protestants suffer'd, my Family were so, and several Times stript and plunder'd, I acknowledge it.

Mr. Baron Weston said, That either she was an impudent Liar, or had a villainous lying Priest to instruct her, to use such a malicious Assertion against the Protestant Religion; and that a Libel (tho' true) is punishable; yet, he said, 'twould be satisfactory to the Court to disprove her Allegations, in Order to the setting a Fine.

Prance was sworn.

Mr. Baron Weston. *Mr. Prance*, pray, were you tortur'd in Prison?

Prance. No, my Lord, I had every Thing fitting, *Captain Richardson* took great Care of me.

Mr. Baron Weston. Indeed the Accusation answers it self, for 'twas impossible for a Man, who had been tortur'd on a Rack, to be able to walk presently after with Irons on his Leggs.

Mrs. Cellier. I don't say it was so, but was so reported.

Francis Corral was call'd, but did not appear.

Captain Richardson. They have kept him away; he promis'd to come; but here's his Wife; who was sworn.

She depos'd, That she carry'd her Husband Provisions, but was not permitted to see him when he was on the Master's Side, but about a Fortnight after she saw him with great Fetters on, which made her imagine he had murder'd some body; and the Jaylors said, they put on the Irons to keep his Legs warm, but she was never beaten for supplying him.

Lord Mayor. Her Husband hath deny'd all before me upon Oath.

Mrs. Cellier. Had he not Holes in his Leggs?

Mrs. Corral. Yes, a great many, as those who brought me Salve can testify.

Captain Richardson. I have never an Iron weighs twelve Pounds.

Mr. Baron Weston. They say you have those call'd Sheers weigh forty Pounds.

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Q

Captain

Page 580.
Corral's Wife examined.

Captain *Richardson*. I'll be hang'd if there be such a one.

Mrs. *Cellier*. Did not your Husband tell me how heavily he was fetter'd, and chain'd to the Floor with a Chain of a Yard long, and forc'd to drink his own Water.

Mrs. *Corral*. I can't remember, and my Husband is sometimes mad, and knows not what he says.

Mrs. *Cellier*. Didn't you tell me Captain *Richardson* drove you away, and prevented your giving Victuals to your Husband?

Mr. *Baron Weston*. This is only Repetition. What affects you, is your endeavouring to perswade the World *Prance* was tortur'd into a Confession, and mad when he did it.

Mrs. *Cellier*. I can't say any thing without my Witnesses: Call *George Grange*. [Who was sworn.]

He depos'd, He went to call Mrs. *Sheldon* and Mr. *Curtis*, but cou'd find neither of 'em.

Mr. *Dormer*. By the Oath you have taken, Hath she sold any of these Books?

Grange. I know she hath sold some.

Mrs. *Cellier*. Call *Mary Smith* [who not then appearing] she desir'd *John Clerk* might be sent for from Goal, [who being in Execution for Debt, the Court said, he cou'd not be brought without a *Habeas Corpus*, because some Part of the Way being out of the Rules, 'twould have been an Escape.]

Page 381.

Mr. *Baron Weston*. What would he prove?

Mrs. *Cellier*. That he was sheer'd with long Sheers, and unreasonable Irons.

Mr. *Collins* (her Council). You cannot prejudice your self more than by talking thus.

Lord Mayor. You are not indicted for the whole, but for some Part of your Book.

Mr. Attorney. She keeps the Coachman away, and now will tell you what he said.

Mrs. *Cellier*. Let his Wife speak to that, she knows I did not send him away.

Captain *Richardson*. She gave 'em Money before, and said she wou'd maintain 'em.

Mr. *Baron Weston*. Call her. [But she was not examin'd.]

Mrs. *Cellier*

Mrs. Cellier. I desire *Mary Johnson* may be call'd,
Mr. Baron *Weston*. What will she prove?

Mrs. Cellier. That she went for Witneses, in Order to my Defence.

Mr. Baron *Weston*. What signifies it, if they are not come?

Mrs. Cellier. I cannot make so good a Defence as I should, if I had been allow'd Time to produce my Witneses; I thought I might have justify'd the publishing what others have told me, so beg your Lordship will impute the Offence (if any) to my Ignorance.

Mr. Baron *Weston*. You ought to have observ'd, his Majesty has set out a Proclamation to prohibit the Printing of Books without License.

Mrs. Cellier. I never heard it, and desire my Council may speak for me.

Mr. Collins. I have nothing to say, and it had been better if you had said less your self.

Mr. Baron *Weston*. What can the Council say, when the Matter of the Indictment is prov'd, unless you cou'd disprove the Evidence: Tho' she bears the Name, I believe more were concern'd in composing the Book, and am convinc'd some malicious Priests were the Authors; if she wou'd discover her Accomplices, it might be a Step towards the Mitigation of her Fine; otherwise, if she will take it on her self, she must suffer for it.

Mrs. Cellier. His Majesty acknowledg'd (before the Council) I had suffer'd for him; I ventur'd my Life thro' a Sea and an Army to serve him; I lost in one Day both a Father and a Brother in his Service, and beg you'll commiserate me at least for my loyal Parents Sake, who lost their Estates for him.

Mr. Baron *Weston*. His Majesty (without doubt) has made you Recompence according to your Deserts; but we must act according to the Rules of the Law. Then Mr. Baron *Weston* directed the Jury, wherein he tells them, that torturing Criminals was illegal, and had never been practis'd since the 20th of Q. Eliz. when *Campion*, the Jesuit, was examin'd on the Rack.

Q 2

[The

Mrs. Cellier urges
the Services her
Family had done
the Crown.

Page 582

The Rack used
in England since
Queen Eliz.

[The Jury desir'd to have the Book with 'em, which the Prisoner (after some Pause) refus'd to consent to.]

Mr. Baron *Weston*. Then they can't have it by Law.

Page 584.
Mrs. *Cellier* convicted.

[The Jury withdrawing for a small Time, brought in their Verdict, That she was guilty of the Writing, Printing, and Publishing.]

Mr. Baron *Weston* said, That according to the Custom of the City, the Recorder or his Deputy must give Judgment, and what she had to say must be deferr'd 'till *Monday*, the End of the Sessions, and she was committed.

Her Sentence.

Monday the 13th of *September*, she was brought to the Bar, and Mr. Recorder (*Sir George Jefferies*) gave Judgment, that she should be fin'd 1000*l.* and committed in Execution till Payment, stand three Times in the Pillory, and find Sureties for Good Behaviour during Life; some Parcels of the Books burnt in her View by the common Hangman, and a Paper of the Cause put on the Pillory.

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The Tryal of WIL. Vicount STAFFORD, before the House of Peers, on an Impeachment of the Commons for High Treason, the 30th of November, 32. Car. 2. 1680.

Five Papish
Lords Impeach'd.

The Commons
signify their
intention of begin-
ning with the
Tryal of the Lord
Stafford.
The Day for the
Tryal appointed
by the Lords.

William, Earl of *Powis*, William, Vicount *Stafford*, Henry, Lord *Arundel*, of *Wardour*, William, Lord *Peire*, and John, Lord *Bellasis*, having been impeach'd by the Commons of High Treason and other High Crimes, and the Commons having, by a Message, acquainted the Lords that they would begin with the Tryal of the Lord Vicount *Stafford*, and desir'd their Lordships to appoint a convenient Day for the Tryal, the Lords appointed the 30th Day of *November*, 1680, for the Tryal. And a Court was erected in *Westminster Hall*, correspondent to the Lords House, for that Purpose; and Benches of several Degrees were

were erected on each Side for the Commons, &c. And the Right Honourable *Henage*, Lord *Finch*, Lord Chancellor, was constituted Lord High Steward.

Lord *Finch*, Lord High Steward.

On the 30th of *November*, the Lord Chancellor came to the House of Lords, being attended as Lord High Steward, where the Lords were assembled in their Robes, and the Bishops in their Rochets; and Prayers being ended, and his Lordship's Commission of High Steward being read, the Bishops withdrew, and the Temporal Lords adjourn'd to their new erected Court in *Westminster Hall*: Where being seated in their Places, and the Commons on each Side of them bare, Proclamation was made for Silence, and for the Lieutenant of the *Tower* to bring forth his Prisoner: Then the Lord *Stafford* was brought to the Bar, and made to kneel: After which the Lord High Steward bid him rise up, and made a Speech to this Effect.

The Bishops withdrew.

Page 594.
The Trial begins.

He acquainted the Prisoner, That altho' an Indictment had been found against him by the Grand Jury for High Treason, he was now to be try'd upon an Impeachment, on the loud Complaints of the Commons, who were the Grand Inquest of the Nation: That he was to be try'd by the whole Body of Peers, the noblest Court in the Christian World: That here the Ballance would be exactly kept, and all due Allowances made that the Case would bear; but if his Lordship had been agitated with a restless Zeal to promote the Catholick Cause, and was engag'd in the black Designs he was charg'd with, he must expect to reap what he had sown: But told him, he should have a fair and equal Hearing.

The Lord High Steward's Speech.

Then the Articles of Impeachment against the five Lords were read, which were to this Effect:

1. That there had been, for many Years, a traitorous and execrable Conspiracy carry'd on by Papists, to subvert the ancient Government and Laws of this Kingdom, and suppress the true Religion.

The seven Articles of Impeachment read.

2. That the said five Lords, together with divers Jesuits, and other false Traitors, had traito-

rously agreed, conspir'd, and resolv'd to depose and murder his sacred Majesty, in Order to accomplish their traitorous Designs; and by malicious and advis'd Speaking, Writing, and otherwise, had declar'd such their Purposes and Intentions: And also had contriv'd to subject this Kingdom to the Pope, and share among themselves the Estates of his Majesty's Protestant Subjects: To restore Religious Houses, and the Lands belonging to them, and to erect new, and to deprive all Protestant Bishops, and other Ecclesiastical Persons, of their Offices and Preferments.

3. That they had held several Consultations, what Instruments shou'd be us'd to murder his Majesty, and had resolv'd to affect it by poisoning, shooting, stabbing, or such like Means; and hir'd several Persons to go to *Windsor*, and other Places where his Majesty resided, to murder him; and the Assassins had accepted their Rewards, and undertaken it, and gone to those Places for that Purpose.

4. That they had consulted to raise, and actually had raised Men, Arms, &c. and treated with the Pope, his Nuntios, and other foreign Ministers, for Supplies of Mony, Arms, &c. to levy War and Rebellion within this Kingdom, and destroy his Majesty's Fortresses, Magazines, Ships, &c. whereby the Ruin and Destruction of this Nation must inevitably have ensu'd.

5. That they had procur'd and accepted several Commissions for Civil and Military Employments from the Pope.

6. That, to conceal their Treasons, they had caus'd their Priests to administer an Oath of Secrecy to the Conspirators, and give Absolutions on Condition they wou'd conceal the said Conspiracies. That they had caus'd Sir *Edmundbury Godfrey*, who had taken several Examinations relating to this Conspiracy, to be murder'd, and given out he was alive and privately marry'd; and after the Body was found, had maliciously reported, That he murder'd himself: Which Murder was committed with Design to deter all Magistrates

Magistrates from making farther Enquiry into their Treasons.

7. That they had contriv'd to lay the Imputation and Guilt of their sad horrid Crimes upon the Protestants, that they might escape Punishment themselves, and expose the Protestants to Scandal and Persecution in all Popish Countries.

All which Treasons and Crimes were done against the King's Peace, his Crown, and Dignity, &c. Of all which Treasons, &c. the Knights, Citizens, and Burgeses, in Parliament assembled, did impeach the said Lords, and every of them, in the Name of all the Commons of England, saving to themselves the Liberty of exhibiting any other Accusations against the said Lords, and of replying, &c. and pray, they may be put to answer the Premises; and that such Tryals and Judgments may be had thereupon as is agreeable to Law and Justice, and the Course of Parliaments.

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To which Articles the Lord *Stafford* put in a general Answer, That he was not Guilty of any of the Offences charg'd against him by the said Impeachment, and put himself upon his Peers, not doubting of their impartial Justice.

The Lord *Stafford* answers generally that he is Not Guilty.

L. C. J. Gentlemen of the House of Commons, please to proceed.

Then Mr. Serjeant *Maynard*, one of the Managers for the House of Commons, open'd the first Part of the Charge, and shew'd, in general, that there was a Plot; because, he said, he observ'd there had been Endeavours used to make it believ'd that it was only a State Trick, a mere Chimera, and nothing of Reality in it.

Mr. Serj. *Maynard* shews that there was no Improbability the Papists shou'd enter into such a Plot,

And first, he said, There was no Improbability the Catholicks shou'd be in a Plot now, in Order to propagate their Religion, because the Histories of all Times, and of all Countries, and particularly our own, afford many Instances of such Plots carry'd on by them; as the many Plots in the Reign of Queen *Elizabeth*, when they were in Expectation of a Popish Successor, and afterwards the Powder Plot, in the Reign of King *James*, did manifest.

Q 4

That

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That another Thing which might induce a Belief of this Plot, was their Murder of Sir E. Godfrey, who had taken the Examinations of the Plot. And a third Thing, which he said might induce People to believe it, was the many Endeavours that had been us'd to seduce and tamper with the Witnesses, or blast their Characters.

Then Sir Francis Winnington, another of the Managers, proceeded to open the Particulars of the Charge, and premis'd, that he look'd upon the Cause of this Day to be the Cause of the Protestant Religion.

Sir Fr. Winnington shews how probable it was there should be such a Plot at this Time.

1. He said, he wou'd shew the Advantages and Encouragements the Papists had at this Time to enter into this Conspiracy, (*viz.*) That those who were Papists at the Bottom, or carry'd on their Interest, had crept into the King's Councils, and that tho' some of them had been detected and discharg'd, as ill Men had succeeded them.

2. That Men were grown too easy and favourable to Papists; and Projects for reconciling us with them had been lately set on Foot, and advanc'd in Print.

3. That the Ministry prevented the Execution of the Penal Laws against the Papists, against whom they were made, and turn'd them upon the Protestant Dissenters; and by that Means weaken'd and divided the Protestant Interest.

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But that the greaest Encouragement they had to enter upon this detestable Conspiracy was, the Prospect of a Popish Successor: That his present Majesty's Firmness to the Protestant Religion frustrated all their Hopes of re-establishing their Religion while he liv'd, and therefore, like true Papists, they wou'd stick at nothing; they wou'd throw off all Obligations of Loyalty and Allegiance, and destroy him.

That as to the Proof of the Plot in general, he thought the several Attainders of the Jesuits, of Langborn, and Coleman, and of the Murderers of Sir E. Godfrey, were sufficient Evidence of that. That it was confirm'd by the Conviction of Reading for tampering with Bedloe; by the Conviction of Knox and Lane, who were suborn'd to swear

Buggery

Buggery against *Otes*; and the Conviction of *Tasborough* and *Price* of endeavouring to corrupt *Dugdale*, another principal Witness: Then he proceeded to shew the Nature and Course of the Evidence against this Lord in particular; and concluded, That as their Lordships Ancestors had, by their Honour and Justice, preserv'd the Ancestors of the Commons, that they did not doubt but their Lordships wou'd tread in their Steps. That they had now in their Hands a great Opportunity of making their Zeal for Truth and for the Protestant Religion famous to Posterity; and no Artifice or Malice cou'd create the least Jealousy in them, that their Lordships wou'd shew any Injustice to the Commons of *England*; and therefore to their Judgment this Cause was submitted, and when they had their Lordships Judgment, they did not doubt but they shou'd drive Popery out of this *English* World.

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Mr. *Treby*. We shall begin with a Witness whose Education has given him an Opportunity of being acquainted with the Inside of their Affairs: It is Mr. *John Smith*.

The Managers
call their Witness
to prove the
Plot in general.

L. C. J. What, do you call him to, Gentlemen?

Mr. *Treby*. To the general Plot, My Lords.

The Prisoner desir'd that this Witness, and the rest, might look him in the Face, and that the Witnesses might give their Evidence separately, and the one not know what the other said; and was answer'd by the Lord Chief Justice, that he shou'd have all the fair Dealings imaginable.

Then Mr. *Smith* was sworn, and directed to look upon my Lord *Stafford*.

He depos'd, That when he went first over to *France*, Abbot *Montague*, Father *Gascoigne*, and others, endeavour'd to perswade him to turn Catholick, and to induce him to do it, told him, the Catholick Religion wou'd soon be brought in in *England*; and asking the Abbot what Reason he had to believe it wou'd, he answer'd, he did not doubt but they shou'd procure a Toleration by which they shou'd bring it in without Noise, and that the *English* Gentlemen, who travell'd

travell'd, did observe the Novelty of their own Religion and the Antiquity of theirs, and the Advantages that were to be had by it: And that one Father *Bennet* told the Deponent, their Party was very strong in *England*, and in a few Years they wou'd bring her in right or wrong: But that the Deponent was not prevail'd with to change his Religion till he met with Cardinal *Grimaldi* as he was on his Way to *Rome*, and the Cardinal perverted him to the Romish Religion: That the Cardinal told him, he was acquainted with many of the *English* Nobility, and had great Assurance that the Popish Religion wou'd prevail; that there was but one Man in the Way, and tho' he was a good natur'd Man they cou'd not prevail upon him, but to accomplish their Designs, they must take him out of the Way: That the Deponent, afterwards, came to *Rome*, and liv'd in the *English* Jesuits College there five Years, where, in their Sermons and private Exhortations they maintain'd, that the King of *England* was an Heretick, and that there was really no King remaining, and whoever took him out of the Way wou'd do a meritorious Action: That, particularly, Father *Anderton*, Rector of the College, the Fathers, *Mumford*, *Campion*, and *Southwell*, held this Doctrine; and the Deponent doubting the Truth of this Opinion, they directed him to some Passages in *Mariana Vasques*, and *Bellarmino*, (which he had since publish'd) wherein they did assert this Doctrine, and that it never was condemn'd at *Rome*: That when the Deponent, and four or five others, left *Rome*, the Fathers assur'd them, that they were not oblig'd to obey the King of *England*, and that in all private Confessions they shou'd exhort the People, who were capable of any Design, to use all their Endeavours for promoting the Popish Religion: That at *Rome* the Deponent read *Coleman's* Letters once a Month, who gave them Intelligence what happen'd at Court, how the Duke, and the Queen, and the chief of the Nobility, were on their Side, and how they carry'd Matters several Times; the Methods my Lord *Clifford* and Sir *William*

William Godolphin took to effect the Work, and that they did not doubt but they shou'd get my Lord Treasurer *Danby* on their Side too: That when the Deponent return'd to *England*, he found the Popish Clergy of the same Opinion here, that their Religion wou'd soon come in: And he observ'd they were raising Money in the North of *England*, which he believ'd was for promoting this Design: That he knew nothing of the Prisoner, my Lord *Stafford*, but that one *Smith*, who was one of those who contributed Money, writ a Letter up to my Lord *Stafford* to complain of two or three Justices of Peace that were active against Popery, upon which one of them [*Sir Henry Calverly*] was turn'd out. That *Smith* told the Deponent he had written another Letter to my Lord, to know if he wou'd convey his Estate away, and if he apprehended they were in Danger; and *Smith* said my Lord answer'd, that several did do so, but he wou'd not, for he expected a sudden Change; and he said, my Lord was so wise a Man, he wou'd not write so without some Ground. That Fathers *Anderson* and *Southwell* used to say at *Rome*, that the King was a good Man, but he was not for their Turn, and he was was the only Man that stood in their Way.

Mr. *Treby*. Did they name the King?

Mr. *Smith*. Yes, it was the common Discourse all over the Country.

Mr. *Treby*. Pray, what have you heard of their firing the City?

Mr. *Smith*. The Papists, beyond Sea, used to deny that they did, but said it came accidentally in a Baker's House; but they used to say, it was no great Matter if it had been all burnt.

The Opinion of the Papists, as to the Fire of London.

Lord *Stafford*. I desire to know how long it is since this Witness was made a Priest?

Sir *Francis Winnington*. No Man need answer a Question whereby he shall accuse himself.

Where one conforms before Prosecution, he shall not be question'd for having been a Popish Priest.

L. H. S. I will ask him a Question: Are not you a Protestant?

Mr. *Smith*. I have been a Protestant near two Years, and I was perverted about six or seven Years before; I was bred a Protestant.

L. H. S. It

L. H. S. It is not criminal to have been a Priest, if he has conform'd.

Mr. *Dugdale* was sworn.

Mr. *Treby*. We call you now only as to the general Part of the Plot, to tell us what Discourses you have heard from the Priests about it.

Dugdale. I have known these fifteen or sixteen Years, that there has been a Design carrying on for bringing in the Popish Religion; and my Confessor, Mr. *Ewers*, has acquainted me, that there were several Lords and Priests in several Parts of England concern'd in the Design: That they were to have Money, and Arms in Readiness for those that wanted, against the Death of the King. I have seen several Letters from *Paris*, *Rome*, and *St. Omers*, to Mr. *Ewers*, (for they were directed to me) to encourage those who were engag'd; and Mr. *Ewers* has sent me with several Letters and Messages, importing, that all shou'd be ready with Money and Arms against the King's Death; for I heard nothing, till of late, about killing the King: And I saw a Letter from my Lord *Stafford* from beyond Sea, importing, That all Things went on well beyond Sea, and he hop'd they did here: And I saw some Letters which came from *Paris* to *St. Omers*, and from thence to Father *Harcourt*; the Substance whereof was, That the likeliest Way to do the Work, if the King shou'd die suddenly, was to throw it upon the *Presbyterians*, who had kill'd the old King, and so the Church of England might be brought to join with them against the *Presbyterians*: And *Harcourt* had communicated these Letters to some Lords to have their Opinions, and this Advice was approv'd: I have of late been at several Consultations with Priests and others, for introducing their Religion, and taking off the King, which they intended shou'd be in *November*, *December*, or *January* 78: And there was a general Collection of Money for carrying on the Design: I have been sent to Mr. *Gavan Vavesor*, and other Jesuits, for Money; I receiv'd 500*l.* and paid it to Mr. *Ewers* at one Time, and he return'd it to *London* to pay for Arms, and Things receiv'd from beyond

yond Sea : And it was agreed that my Lord *Aston*, Sir *James Symonds*, and others, shou'd go in *October* 1678, to dispose of the Arms which they had receiv'd from beyond Sea, to the Value of 30000 *l.* as I have heard ; and I have heard from *Gavan* and *Ewers*, that they were to have Men rais'd there as well as here ; and that the *French* King wou'd furnish Men, and wou'd not be wanting with other Aid, if the King shou'd die : And I have been employ'd to make Foot Races, that the Conspirators might meet without Suspicion : For these two Years, the Letters relating to the Plot, have come thro' my Hands ; and one of them, about the Death of Sir *E. Godfrey*, when I carry'd it to Mr. *Ewers*, he said, there was one of our Enemies taken out of the Way : That Letter was dated the 12th of *October*, the Day he was murder'd, and I receiv'd it on *Monday* the 14th ; and it had this Expression, *This Night Sir E. Godfrey is dispatch'd.* I said this wou'd ruin the Design, but Mr. *Ewers* reply'd, It wou'd be thrown upon some debauch'd Persons he had been active in punishing : And Mr. *Ewers* told me the Reason they took off Sir *E. Godfrey*, was, That the Duke of *York* having sent a Message to Mr. *Coleman*, not to reveal what he knew concerning the Plot, and *Coleman* answering, he had been so foolish to reveal all to Sir *E. Godfrey*, who had promis'd to keep it secret, but he was afraid he wou'd come in Evidence against him : The Duke assur'd him again, if he wou'd but conceal the Plot, Sir *E. Godfrey* shou'd not come in Evidence against him ; and the next News I heard was, that he was dispatch'd.

My Lord, I was so encourag'd to believe there wou'd be an Alteration in the Government, that I contributed an Estate of the Value of 400 *l.* towards it, and to pray for my Soul, and did promise 100 *l.* more when my Lord *Aston* and I shou'd come to Account : And I know that Mr. *Heveningham*, Sir *James Symonds*, my Lord *Aston*, Mr. *Draycot*, Mr. *Howard*, and Mr. *Gerard*, did also contribute Money : And I have several Times been brought under an Oath of Secrecy, and particularly

larly on the 18th or 15th of *November*, when I left my Lord *Aston's*, in order to abscond, I took the Sacrament, in Mr. *Ewers's* Chamber, not to disclose the Plot; tho' I have been advis'd since, that such Oaths were better broken than kept, and thereupon discover'd it: And I can take upon me to say, my Lord *Stafford* has been present at Consults, where the introducing their Religion, the buying of Arms, and the Death of the King, has been under Consideration.

And farther, In the Year 78, there was an Indulgence came from beyond Sea, and thro' Mr. *Ireland's* Hands, to Mr. *Ewers* and Mr. *Gavan*; and Mr. *Gavan* publish'd it at *Boscobel*, as it was also in all private Chapels, That whoever was active in the introducing the Romish Religion, or killing the King, shou'd have free Pardon of all his Sins.

Mr. *Foley*. What Arguments have been us'd to prevail with you to undertake this Design?

Mr. *Dugdale*. They told us at their Meetings, that the King was an excommunicated Heretick, and out of the Pale of the Church, therefore it was lawful to kill him; and that it was no more than the killing of a Dog: And I have heard, that about the Time the King shou'd be kill'd, several were to be provided with Arms, and rise at an Hour's Warning, and cut the Protestants Throats; and if any escap'd, there shou'd be an Army to cut them off.

Mr. *Treby*. Did you ever know or hear of *Otes*, or *Bedloe*, till the Plot was detected?

Mr. *Dugdale*. I have heard by the Priests, that they were Messengers entrusted by them, but no otherwise.

Mr. *Treby*. My Lord, the Reason of this Question is, They charge the Papists with a Plot, and the Papists charge our Witnesses with a Conspiracy against them; now we show that Mr. *Dugdale* had no Knowledge of the other Witnesses, and so there cou'd be no Contrivance amongst them.

Sir *John Trevor*. What People did *Whitebread* direct *Ewers* to employ in this great Design?

Dugdale.

Dugdale. He writ Mr. *Emers* Word, It was no Matter whether they were Gentlemen, so they were stout and trusty.

L. H. S. What shou'd they be trusty for?

Dugdale. For the killing of the King.

L. H. S. Was that said plainly in the Letter?

Dugdale. To the best of my Remembrance, those very Words. No Cypher or Character was used.

Mr. *Treby.* Pray tell us what you did with your Papers and the Letters, that they are not produc'd?

Dugdale. When I was by Mr. *Emers's* Directions to take my Flight, I convey'd all my Papers which belong'd either to him or myself, concerning the Plot, to a House not far from my Lord *Ashton's*; and there, by the Help of two Maids, *Elizabeth* and *Anne*, who prepar'd a Fire in their Chamber for that Purpose, I burnt them.

Mr. *Foley.* What Assistance was the Pope to give for carrying on this Design?

Dugdale. I heard he promis'd several Sums; and particularly that he wou'd assist the poor distressed *Irish* with Men and Money.

Lord *Stafford.* What Sums did the Pope contribute?

Dugdale. I have heard about 10000*l.* and was told by one that was my Lord *Stafford's* Servant, that the Pope's Income was 24000*l.* a Day; and that if he wou'd do as he had promis'd, he was able to do very much.

Prance was sworn.

He depos'd, That he was at a Cook's in *Ivy Lane*, with one *Singleton* a Priest, in 78, and he told the Deponent, He did not fear but he shou'd be Priest of a Parish-Church in a little Time, and that he wou'd make no more to stab forty Parliament Men, than to eat his Dinner.

Otes was sworn.

Mr. *Treby.* We desire him to speak only to the General Design, at present.

Otes. In the Year 76, I was Chaplain in the Duke of *Norfolk's* House, (being then a Minister of the Church of *England*) and there I became acquainted

acquainted with one *Bing*, who was a Priest in the House, and *Kemish* and *Singleton*, two other Priests, used to visit him: *Singleton* told me, The Protestant Religion was upon its Last Legs; and that it wou'd become me and all Men of my Coat, to hasten Home to the Church of *Rome*. My Lords, having for some Years suspected the Growth of Popery, to satisfy my Curiosity, I pretended some Doubts, but I found these were Regulars, and had very little Learning: Afterwards, I met with one *Hutchinson*, and he was a Saintlike Man, one that was religious for Religion's Sake, but he was not for my Turn neither, for I wanted to deal with their Casuists: But he introduc'd me to one of the Society, and these I found to be cunning politick Men, and those that cou'd satisfy me: After I had had some Discourse with them, I pretended to be convinc'd: And on *Ash-Wednesday* 1676 was reconcil'd: *Strange*, who was then Provincial of the Jesuits, told me, Now I must lay down my Ministry, for my Ordination was invalid: Then I desir'd I might be admitted a Novice of their Order; and after some Consideration, I was admitted: And they propos'd my travelling beyond Sea on their Business, which I agreed to; and accordingly, in *April* 77, I sail'd for *Bilboa*, with their Letters of Recommendation; and from thence I went to *Valladolid* in *Castile*; but, by the Way, I open'd certain Letters, which mention'd a Disturbance design'd in *Scotland*; and wherein was express'd their Hopes of effecting their Design in *England*. But before I arriv'd at *Valladolid*, there were Letters come thither, that the King was dispatch'd; but there came Letters afterwards to contradict it, and desire the Fathers to stifle the Report: And some Letters in *June* said, They had procur'd one *Beddingfield* to be Confessor to the Duke of *York*; and that he had assur'd them of the Duke's Readiness to comply with them in advancing the Catholick Religion: And I found the Provincial of the Jesuits in *Castile* had, by his Industry, rais'd 10000*l*. which was to be sent to *England*: In *December* some Missionaries arriv'd in *Spain*, with twelve Students;

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Students ; and, at their coming, Father *Mumford* (alias *Armstrong*) preach'd them a Sermon, wherein the Oaths of Allegiance and Supremacy were declar'd to be antichristian, heretical, and devilish, and the King's Legitimacy question'd ; and it was said, his Religion entitl'd him to nothing but Death and sudden Destruction ; for that he appear'd an Enemy both to God and Man. In the Month of *November*, as I was order'd, I came for *England* : (and was lodg'd at one *Grigson's* in *Drury-Lane*, till I went to *St. Omers*) I carry'd the Letters I brought from the Provincial of *Castile*, to *Strange* the Provincial here ; and Father *Keins* being ill, he was lying upon *Strange's* Bed, and was saying, he was sorry for honest *William*, (so *Groove*, the Russian who was to kill the King, was call'd) that he had mis'd his Enterprize : They had several Times attempted the King's Life since the Fire of *London*, but were more zealous for it since *Coleman* had been deny'd the Dissolution of the long Parliament. In *December*, N. S. I left *England* ; and, about the 9th or 10th, came to *St. Omers* : In the Letters I carry'd from *Strange* to the Fathers there, he told them, They had great Hopes of their Design taking Effect the next Year, but thought fit to suspend it 'till they saw what the Parliament wou'd do : That sometime after they had a Letter from their new Provincial *Whitebread* : He order'd *Conyers* to preach to the Society on *St. Thomas Becket's* Day, and told them, he wou'd be as zealous for carrying on the Design as his Predecessor had been ; *Conyers*, in his Sermon, inveigh'd against the Tyranny of Princes, particularly of the King of *England* ; and declar'd, the Oaths of Supremacy and Allegiance were antichristian and devilish ; and that it was fit to destroy such as countenanc'd them.

We found by Letters from *Ireland*, that the *Talbots* and others were zealous for raising Forces there, and resolv'd to let in the *French* King, if the Parliament urg'd the King to break with *France* ; and *Morgan*, who had been sent as a Visitor thither, gave an Account how ready the *Irish* were to vindicate their Freedom and Religion

from the Oppression of the *English*. In *March* we had an Account of an Attempt that had been made on the King by *Pickering*, but the Flint of his Gun, or Pistol, being loose, the King escap'd; for which *Pickering* receiv'd Discipline, and *Grove* was chid. In the latter End of *March* there came a Summons from *England* to a Consult there, and Eight or Nine came from *St. Omers*, *Liege*, and *Ghent*, to the Consult, and I attended them. In *April*, they met at the *White-horse* Tavern in the *Strand*, and then adjourn'd into particular Societies, where they debated, and resolv'd on the King's Death; and *Grove*, one of the Assassines, was to have 1500*l.* and the other being a religious Man, was to have 30000 *Masses* said for him. After staying in Town a while, we return'd to *St. Omers*; and the Provincial, when I had been there a little Time, order'd me into *England* again, to attend their Affairs; and I arriv'd in Town the 17th of *June*, O. S. and Letters follow'd us, with Proposals for Sir *George Wakeman* to poison the King; and the *Spaniards* 10000*l.* was design'd to be offer'd him for that Service: *Coleman* look'd upon it as too little, and thought he ought to have 15000*l.* and *Langborn* thought it too much, and that he might do such a Service for nothing; and said, he was a narrow-spirited Man if he wou'd not engage in it: There was 5000*l.* paid Sir *George*, as I found by the Books; but being ill then, I did not see it paid. In *July* Father *Ashby* came to Town, and going to the *Bath*, was directed to observe how the Catholicks stood affected in *Somersetshire*. About the 26th of *August*, *Fennick* went to *St. Omers* to attend the Provincial Home, and gave an Account, that Sir *George Wakeman* had accepted the Proposal. (I forgot to acquaint your Lordships, that *Strange* told me how the City of *London* was fir'd; and that many of the Incendiaries were taken, but were discharg'd by the Duke of *York's* Guards, by the Duke's Order) The latter End of *July* I communicated some of these Matters to Dr. *Tongue*; and the King had Notice of them the 13th or 14th of *August*: The 3d of *December*, I was betray'd to these Men; so that

that my Intelligence wholly ceas'd the 8th of September; and I was forc'd to keep private; and for the rest, I refer myself to my Examinations before the Lords and Commons.

Mr. Dennis was sworn.

He depos'd, That in July 77, he saw Mr. Otes in the Jesuits College at *Valladolid*; and, in Conversation, Otes told him, that he was a Vicar in *Kent*, and Chaplain to a Great Nobleman in *England*, and that he was converted by the Jesuits in *England* to the Roman Catholick Faith, and sent thither to fit himself for the Society of Jesuits: And Otes understanding he was going to *Madrid*, desir'd him to carry a Letter thither, to the Archbishop of *Tune*, an *Irish-man*, and lent the Deponent Money to bear his Charges: That when the Archbishop had read the Letter, he said, Smiling, Mr. Otes is desirous to receive the Order of Priesthood from me; and added, it might be much in their Way, he was a fit Man for their Purpose; and said, Dr. Plunket, the Primate of *Ireland*, was resolv'd to bring a French Power into *Ireland*, to support the Catholicks in *England* and *Ireland*; and, if it pleas'd God, he would go over to *Ireland* himself, to assist in that pious Work.

Mr. Foley. What Religion is he of?

Mr. Dennis. I am a Dominican Fryer.

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Mr. Serj. Maynard. He hath a Pardon, my Lords.

Sir J. Trevor. I would ask him if he knows Mr. Otes had more Money than he lent him.

Mr. Dennis. When he lent me the Money, he pull'd a Bag out of a Drawer, that had a considerable Sum in it, and he did not want Money there then, I'm certain.

L. H. S. Have you heard of any Money gather'd in *Ireland* to support this Plot?

Mr. Dennis. I have both heard and seen it; and the Collectors were *Reynolds* and *Berne*. And I ask'd why the Money was levy'd? And it was answer'd, That that Levy, and several others, were made to encourage the French King, in whose Kingdom were several *Irish* Bishops and

Clergymen, whose Business it was to solicit that King to invade *Ireland* when Time shou'd serve.

Lord *Stafford*. Does this Witness profess himself of the Church of *Rome* still?

Mr. *Dennis*. I am a Roman Catholick still, my Lord.

Then Mr. *Jennison* was sworn.

He depos'd, That in the Beginning of the Year 78, he heard Mr. *Ireland* and Mr. *Tho. Jennison*, Jesuits, speak of a Design they had to procure a Toleration, by bribing the Parliament-Men; and that they hoped to secure the Duke of *York's* Succession, by getting Commissions granted to those of their Party, to be ready to rise upon the King's Death: That he has heard them say, their Religion cou'd never flourish 'till the Government was alter'd after the Model of the *French*: That the Deponent being at Mr. *Ireland's* Chamber in June 78, *Ireland* said, That there was but one in the Way, and it were easy for Sir *George Wakeman* to poison him: That in *August* the Deponent was in *Ireland's* Chamber, and he was pulling off his Boots, being just come out of *Staffordshire*, and the Deponent telling him, his Majesty went a Fishing early in a Morning, accompany'd but by two or three, *Ireland* ask'd the Deponent, if he wou'd be one of those that wou'd go to *Windsor* to take off the King; and said, he wou'd remit the 20*l.* the Deponent ow'd him, if he wou'd; but the Deponent refus'd to have any Hand in it: Then *Ireland* ask'd him, if he knew any stout *Irish-man*? And the Deponent nam'd Capt. *Levallian*, Mr. *Karney*, Mr. *Brogbal*, and Mr. *Wilson*: That *Ireland* said, he knew the first two, and approv'd of them, and took the Names of the others in Writing; and said, he was going to a Club to meet *Coleman*, *Levallian*, and *Karney*; and then press'd the Deponent to repay him the 20*l.* He depos'd farther, that when he receiv'd the 20*l.* he went with his Brother, Mr. *Tho. Jennison*, the Jesuit, to *Harcourt's* Chamber, to thank the Fathers for the Loan of it; and there Mr. *Tho. Jennison* used that Expression in *Otes's* Narrative: If C R wou'd not be RC, he shou'd not be long C R; which

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which he interpreted thus: *Si Carolus Rex non esset Rex Catholicus, non foret diu Carolus Rex.* And that Mr. Tho. Jennison said farther, in Discourse about introducing their Religion, That if the King were excommunicated or depos'd, he was no longer King, and it was no Sin to take him off; and if it were discover'd who did, two or three perhaps might suffer, but the Matter wou'd soon blow over: That Mr. Tho. Jennison also told the Deponent, That there was a Design on Foot so laid, that it cou'd not well be discover'd; and that the Queen, the Duke, the Lords *Bellasis*, *Powis*, and *Arundel*, were concern'd in it; and the Deponent thought he nam'd my Lord *Stafford* too: That he told the Deponent there was a new Army to be rais'd to bring in the Catholick Religion, and he wou'd procure him a Commission; and he wou'd tell him more, after he had receiv'd the Sacrament of Secrecy: But the Deponent understood the Army was not to be rais'd till the King was taken off: That he heard *Cassil*, a Priest, say, that *Bellarmino* held, that the Pope ought to have the same Power over Princes that *Jehoida* exercis'd over *Abaliab*.

Mr. Treby. Did he ever hear that Mr. Otes was in the Plot?

Jennison. My Brother, Tho. Jennison, told me, in July 78, that Otes, a Person newly come over to them, was in the Design.

Sir John Trevor. Did not you see Otes in April, before the Plot broke out.

Jennison. Yes, I saw him at Ireland's Chamber the latter End of April, or Beginning of May.

L. H. S. You say you did not know him in July, how then can you say you saw him before?

Jennison. I did not know him: I only saw him come to Ireland's Chamber, and whisper two or three Minutes; and they told me it was Otes, after he was gone.

L. H. S. Do you know him to be the same Man you saw then?

Jennison. I can't tell that.

Sir John Trevor. We desire he may tell your Lordship what his Brother is.

The TRIAL of

Jennison. My Brother was a Jesuit bred up at St. Omers.

L.H.S. Your Brother is dead, and dy'd in Newgate.

Jennison. Yes, my Lord.

The Records of the Attainders and Convictions of those concerned in the Popish Plot, produc'd as Evidence of it.
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Then the Records of the Attainders of *Coleman, Ireland*, and the other Conspirators, were produc'd; and of *Green, Bury*, and *Hill*, for the Murder of Sir *E. Godfrey*: As also the Conviction of *Reading*, of *Tasborough* and *Price*, of *Knox* and *Lane*, and of *John Giles*.

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The Managers desir'd the Record of *Coleman's* Attainder might be read at length; and accordingly the whole Indictment, &c. was read in Latin: After which Sir *William Jones* acquainted the Court, that they had finish'd their Evidence as to the Plot in general; but that their Evidence as to the Lord *Stafford* in particular, would be so long, that they would not go thro' it the remaining Part of this Day: Whereupon their Lordships agreed to adjourn, and hear the Evidence of my Lord *Stafford* the next Day, that they might have the whole Evidence entire.

Lord *Stafford*. I would have your Lordship's Directions, whether I shall answer this General Charge first, before they enter upon the other.

L.H.S. My Lord, you are to make all your Answer entire; and that is best for you.

Lord *Stafford*. I am very well contented, that I may be the better prepar'd for it.

The Lords adjourn

Then the Lord High Steward, with the Consent of the Lords, adjourn'd to the House of Lords: And the Commons return'd to their House, and Mr. Speaker resum'd the Chair; and then the House adjourn'd till Eight the next Morning.

2d Day of the Trial.

Wednesday December 1, 1680, The Lords sent a Message to the Commons, that they would proceed in the Trial of the Lord *Stafford*, at Ten that Morning, in *Westminster-Hall*: Whereupon Mr. Speaker left the Chair, and the Commons came into *Westminster-Hall*, and having taken their Places, about Ten the Lords came down; and after Proclamation for the Lieutenant of the Tower to bring his Prisoner to the Bar, the Lord High Steward

Steward directed the Managers to proceed in their Evidence.

My Lord *Stafford* desir'd his Council might be near him, to argue such Points of Law as shou'd arise : The Managers oppos'd his Council being so near as to prompt him ; but admitted, that they might be within hearing of the Evidence : They said, indeed, in Matters of Law Council ought to be allow'd ; but pray'd there might be no Council to advise him in Matter of Fact, and tell him what Answers to give.

The Lord *Stafford's* Council admitted to hear the Evidence, but not to stand so near as to prompt him.

L. H. S. When there is Cause, make the Exception ; but, as yet, they do not mis-behave themselves.

Then Mr. *Treby* proceeded, and said, He hop'd they had given Proof sufficient of the Plot in general : And it were a Wonder, if the Lord at the Bar, who was so fervently affected to that Party, shou'd not be concern'd in so general a Design of the Party ; but this being but Presumption, they shou'd proceed to give positive Evidence : And first, he call'd Mr. *Dugdale*.

L. H. S. Let him be sworn again ; you swore him to give Evidence as to the Plot in general ; but you did not swear him as to the Particulars against my Lord *Stafford*.

Dugdale sworn a 2d Time, when he came to give a particular Evidence against the Lord *Stafford*.

Sir *William Jones*. 'Tis true, we did divide the Evidence into two Parts, but his Oath was not divided ; but if it will be any Satisfaction, let him be sworn over again, tho' I think it was never seen before.

Mr. *Dugdale* was sworn.

Lord *Stafford*. He is so chang'd, I don't know him ; I beg of your Lordships he may look me in the Face, and give his Evidence as the Law requires.

Sir *John Trevor*. If this Witness is to look my Lord continually in the Face, the Court will not hear half his Evidence. I desire he may address himself, as the Law is, to your Lordships and the Judges.

L. H. S. You do see the Witness, my Lord, that is enough for Face to Face.

Lord *Stafford*. I do submit.

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Then Mr. *Dugdale* began his Evidence.

Lord *Stafford*. My Lords, I desire I may have Pen, Ink, and Paper.

The Prisoner permitted to have a Clerk to take Notes for him.

L. H. S. Let my Lord have them. I hope your Lordship has one to assist you, that takes Notes for you.

Lord *Stafford*. There was one all the Day Yesterday: And I desire Mr. *Dugdale* may begin his Evidence again.

L. H. S. Let him begin his Evidence again, for my Lord had not Pen and Ink before.

Dugdale swears positively that the Prisoner consented to the Resolution of the King's Death.

Dugdale. While I was Servant to my Lord *Alton*, my Lord *Stafford* came frequently thither; and, by this Means, I became acquainted with him; and, upon Mr. *Ewers* Recommendation, was frequently admitted to converse intimately with my Lord: The latter End of *August*, or in *September* 78, my Lord *Stafford*, my Lord *Alton*, and several other Gentlemen, met in a Room of my Lord *Alton*'s House; and for my Encouragement, by Mr. *Ewers*'s Means, I was admitted, and there I heard them come to a Resolution upon the Debates that had been beyond Sea, and at *London*: That the best Way, and the speediest they could resolve on, to introduce their Religion, was, to take away the Life of the King.

L. H. S. Was my Lord *Stafford* consenting to that Resolution?

Dugdale. Yes, I heard every one give their particular full Assent.

At which there was a great Hum.

At which there was a great Hum.

L. H. S. What is the Meaning of this? For the Honour and Dignity of publick Justice, let us not carry it as if we were in a Theater.

Dugdale. One Sunday Morning, in *September*, my Lord *Stafford* came from Mr. *Abner*'s House in *Stafford*, to my Lord *Alton*'s, to hear Mass; and I meeting him at the outward Gate, as he alighted, He said, *It was a sad Thing we cou'd not say our Prayers but in a hidden Manner; but e'er long, if Things took Effect, we shou'd have the Romish Religion establish'd.* After this, I think it was about the 20th or 21st of *September*, my Lord *Stafford* sent for me into his Chamber; he was then dressing; and having sent

sent his Men out, he told me he had a good Account from Mr. *Ewers*, and other Gentlemen, that I wou'd be faithful and true to their Intentions about the introducing their Religion, and likewise told me he was concern'd himself in a very high Degree; and said, if I wou'd be concern'd in taking away the Life of the King, I shou'd have, for my Charges and Encouragement, 500*l*. and that I shou'd go with him in *October* to *London*, and be under the Care of him and Mr. *Ireland* there; or at my Lord *Aston's*, about 25 Miles from *London*, under the Care of Mr. *Parsons*; and I engag'd to be true to my Lord. After this I went and communicated it to Mr. *Ewers*, doubting my Lord's Ability to make good the Payment: And *Ewers* told me, I need not fear it, for *Harcourt* and *Ireland* had Money enough in their Hands to defray that and other Charges; and I shou'd not want Money for carrying it on: And at another Time, when there was a Debate about my going up, (my Lord *Stafford* being present) they told me I shou'd be made equal to one Capt. *Alderly*, that is since dead, and I shou'd have a Reward in *London*. I understood, that the Duke of *York*, my Lord *Arundel*, and my Lord *Bellasis*, and others, were to give me it. — At another Time, in my Lord *Aston's* Dining-Room, my Lord *Stafford* said, the Reason he was such an Enemy to the King was, That both he and my Lord *Aston* had been great Sufferers for the King; and his Grandfather, or Father, had spent 30000*l*. in the King's Service, and had no Recompence; and whenever there was any Preferment to be dispos'd of, it was rather given to such as had been Traitors and Rebels, than to such as had been loyal: He said, this was his chief Motive, if there were not Religion in the Case, which was of a higher Nature.

Mr. *Foley*. What Assurance had he of a Pardon, if he shou'd succeed?

Dugdale. My Lord *Stafford* said, I shou'd have a free Pardon for it from the Pope; for the King was excommunicated, a Traitor, and a Rebel, and an Enemy to *Jesus Christ*; and I was to be Sainted.

Mr. *Foley*.

The TRIAL of

Mr. *Foley*. Let him give an Account of the Letters my Lord *Stafford* wrote to *Emers*.

Dr. *Dugdale*. There came a Letter to *Emers* from my Lord *Stafford*, that all went well beyond Sea, and so he hoped they did here, for the carrying on the Design.

Lord *Stafford*. How long has he known of this Plot?

Mr. *Dugdale*. In general, for the introducing the Popish Religion, these fifteen Years; but that was not for taking away the Life of the King, but for making ready Men and Arms against the King died.

Lord *Stafford*. My Lord, he allows himself too great a Latitude; he says, the latter End of *August* or Beginning of *September*, I told him such and such Things; I desire he may name the Days, and I may prove I was not there.

Mr. *Dugdale*. I can't remember particular Days as to the rest, but the Day he sent for me to his Chamber and offer'd me 500*l*. I remember, by a particular Circumstance, that that was the 20th or 21st of *September*, 78.

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Lord *Stafford*. Did he ever see Mr. *Emers* and me together alone?

Mr. *Dugdale*. I have seen them several Times in my Lord *Aston's* Gardens, and have been with them when there was only them two besides my self.

Otes was sworn again.

Otes was sworn again, as to the the Prisoner's Concern in the Plot in particular.

Mr. *Treby*. Pray, speak your Knowledge of my Lord *Stafford's* being engag'd in the Design.

Otes. In the Year 67, there were divers Attempts upon the Life of the King, as the Jesuits told me: And in the Year 74, there was an Attempt upon him upon account of his withdrawing the Indulgence: In 77, when I was in *Spain*, there were several Letters to the *Irish* Jesuits, from my Lord *Stafford*, to acquaint them how zealous he was in promoting the Catholick Designs. The same Year, when I was at *St. Omers*, being order'd to look over the Papers, I found several Letters from my Lord *Stafford*, intimating to the Fathers, that whereas there had been a Difference

Difference between him and the Society several Years, the Business was reconcil'd by one Signior *Cop*, and he did assure the Jesuits of his Fidelity and Zeal; In the Year 78, I found other Letters from my Lord *Stafford*, wherein he blames Mr. *Coleman's* Openness in communicating Secrets to Men of whose Fidelity he was not secure; and and in June 78, my Lord *Stafford* came to *Fenwick's* Chamber in *Drury-Lane*, and receiv'd a Commission to be Pay Master General of the Army intended to be rais'd, and my Lord was then going into *Staffordshire*, and said, he did not question but give a good Account how Affairs stood in *Staffordshire*, *Shropshire*, and *Lancashire*: And at at his Return he did not doubt but *Grove* would do the Business: And speaking of the King, my Lord said, he hath deceiv'd us a great while, and we can bear no longer.

Lord *Stafford*. I will submit to any Thing, if ever I saw *Fenwick* or heard of him till the Discovery of the Plot.

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Otes. He came to him by the Name of *Thomson*.

Lord *Stafford*. I will willingly die if ever I saw this Doctor.

Otes. I went by another Name too, and was in another Habit.

Lord *Stafford*. I never saw his Face, or *Fenwick's*, or *Thomson's*, except one *Thomson* a Merchant at *Brussels*: Nor have I writ one Letter this twenty five Years to, or had any Correspondence with, a Jesuit.

Edward Turberville was sworn.

Mr. *Treby*. Give an Account of your Knowledge.

Turberville. In the Year 75 I was perswaded, by my Lady *Powis*, and one *Morgan*, Confessor to the Family, to go to *Doway*, in Order to take the Fryers Habit; but finding nothing but Hypocrisy and Villainy among them, I grew weary of being there, and with much Difficulty escap'd to *England*; but my Friends were so set against me for coming away, that they declar'd they would do nothing for me, but rather all the Mischief they could: And I supposing the World would take

Turberville's Evidence of my Lord's soliciting him to assassinate his Majesty.
Page 619.

take a Character of me from my Relations, I took a Resolution to go to *France*, where I had a Brother a Benedictine Monk, who endeavour'd to get me to be of that Order; but I being averse to that, my Brother recommended me to this noble Lord, the Prisoner; and his Lordship understanding my Condition from him and the other Fathers of the Convent, imagin'd I was a fit Instrument for his Purpose, and told me he wou'd put me in a Way to retrieve my Reputation with my Relations, and make my self an happy Man; and having made me promise Secrecy, told me in plain Terms, it was by taking away the Life of the King of *England*, who was an Heretick, and consequently a Rebel to God Almighty: And I being to go to *Diep*, in Order to go with his Lordship for *England*, told him, I wou'd give him my Answer at *Diep*; but his Lordship writing me Word to *Diep*, he shou'd go to *England* by Way of *Calais*, and that I shou'd wait on his Lordship in *London*; I got Passage in a Fisher-Boat for *England*, but never came near my Lord *Stafford*, being unwilling to accept his Proposal; and so I apply'd my self to the Duke of *Monmouth*, who recommended me into the *French* Service.

Lord *Stafford*. I never saw this Man before in my Life; and, it seems, I was a little unlucky, in chusing one to kill the King who was such a Coward; he run away from his Colours, and was to have been shot to Death: I desire to know when he went to *Paris*, and who recommended him to me.

Turbervile. I think it was the Beginning of *June*, 75, I went to *Paris*, and I was recommended to my Lord by Father *Sherborne*, Prior of the Benedictine Monks in *Paris*, Father *Nelson*, Sub-Prior, and my Brother, who is a Monk in the same Convent.

Lord *Stafford*. When was it he spoke to me?

Turbervile. It was in *November* 75. I came to my Lord several Times in the Space of a Fortnight. It was at the corner House of the Street which faces

Laxenburgh

Laxenburgh House; the Prince of *Conde* lodges on the right Hand in that Street.

Lord Stafford. If the Prince of *Conde* did, I will say no more.

Turberville. I can't take it upon my Oath, but I think he does.

Lord Stafford. Did he come to my Chamber, or where?

Turberville. Sometimes to my Lord's Chamber, and sometimes he met me in a lower Room.

Lord Stafford. Where was this Discourse about killing the King?

Turberville. In the lower Room.

Lord Stafford. What kind of Room was my Chamber?

Turberville. I can't remember that.

Lord Stafford. No, I dare swear you can't.

L. H. S. How came it to pass you never discover'd this sooner.

Turberville. I thought I shou'd not be safe, I did not know but my Brains might be knockt out.

L. H. S. How came you to do it now?

Turberville. The King's Proclamation, and some Friends who perswaded me I might do it with Safety, will give your Lordships an Account.

Sir W. Jones. My Lords, we shall call no more Witnesses, unless the Prisoner occasion us to do it, to support the Credit of those we have call'd.

Then the *Lord Stafford* enter'd upon his Defence, and said, It was now about two Years since he was accus'd of this detestable Treason, that he had been several Times, in those two Years, made close Prisoner, and neither his Wife, Children, or Servants, permitted to come near him, which were very great Afflictions; and while he was preparing for his Defence in an ordinary Way, he understood he was impeach'd by the Commons, which was such an Addition to his Misfortunes, and had made such an Impression on him, that he was hardly in a Condition to make any Defence, and desir'd their Lordships, if there appear'd any Defect in his Defence, to impute it to his Weakness, and not any Want of Innocence: Then he express'd his Abhorrence
of

The *Lord Stafford*
enters upon his
Defence.

The TRIAL of

of Treason in general, and particularly the Gun-Powder Treason, which he acknowledg'd to be a Contrivance of the Jesuits and others, but said it was the Conspirators private Interest, and not the Interest of Religion, that put them upon it.

He said, he did not know whether the Church of *Rome* held the Doctrine of King-killing, and absolving Persons from their Allegiance: But he knew the Doctors of the *Sorbonne*, and several other considerable Members of that Church, had condemn'd it, as he did for his Part, and that he had taken the Oath of Allegiance, with which he thought no Power on Earth could dispense. That as to the Proof of a Plot by the Papists in general, he did not see how he was affected by it, for that it had not been made out that his Lordship was a Papist, and their Lordships ought to take Notice of nothing but what appear'd in Proof; but however, if it did appear he was of that Church, he had kept himself from being poison'd by so wicked a Principle as they were charg'd with: That all Accusations of Treason ought to be accompany'd with Circumstances, antecedent, concomitant, and subsequent, according to *Sir Edward Coke*, but here the whole Tenour of his Life, from his Infancy, had been of another Strain; and then he recounted his Services to the Crown, during the late Rebellion, and his Dutifulness to his present Majesty in his Exile, so that his Life, he said, had given no Countenance to this Accusation these perjur'd Villains had brought against him. That his Lordship had Offers of a Pardon made him if he would make a Discovery, as well by some Members of the House of Peers, as by the Members of his Majesty's Privy Council; but upon the strictest Search into his Conduct he could not imagine there was any Foundation for the Charge against him: And that his Lordship had Notice of the Discovery of this Plot long before he was committed, so that he had Opportunity enough of making his Escape; if he had been guilty; and his remaining here he hop'd would be taken as one Argument of his Innocence.

Then

Then his Lordship desir'd he might have the Perusal of the Journal of the House of Lords, and the Depositions that had been made before the Justices of Peace by *Dugdale, Otes, and Turberville*; and by comparing their Testimonies he did not doubt but make it appear they were perjur'd, but without these Depositions he did not know how to make his Defence.

Sir *Francis Winnington*. The Witnesses have been examin'd *Viva Voce*; and as we cannot use the Depositions he mentions, so neither can they be used by him.

Mr. Serj. *Maynard*. When there is Occasion to produce them upon any particular Point, he may produce them if he can; but to desire to have all the Depositions that have been made by our Witnesses, is a strange Request.

L. H. S. Can you object to my Lord's having Copies of our Journal, and of such Depositions as were sworn before a Magistrate?

Sir *W. Jones*. What is enter'd upon your Lordships Journal was sworn above two Years ago, and my Lord, or any Man, might have repair'd to it: Therefore, for his Lordship to come now and desire such Depositions as he might have had before, is only to gain Time and cause our Evidence to be forgotten: And the Judges will inform your Lordships, that when a Man is try'd at the Assizes, if he desires a Copy of the Informations remaining in Court, that he may except against the Witnesses, it is what the Court does not use to grant.

Page 623.

Sir *Francis Winnington*. Indeed I have seen the Judges, upon Tryal of a Criminal, call for the Depositions or Informations from the Justice of Peace who took them, and cause them to be read; but for a Prisoner at the Bar to call for Examinations from the Prosecutors, & *ex debita Justicia* to demand them, is a Thing that was never done, and I hope will not be admitted here.

Whether Examinations of Witnesses before a Justice of Peace shall be used as Evidence, either for or against a Prisoner at his Tryal.

L. H. S. Your Lordship ought to have been provided with some particular Exception, and not to make your Demand in general.

Lord

Lord *Stafford*. I am inform'd that *Turberville* did swear before two Justices of Peace, that he spake with me at *Doway*, and in *Paris*, in the Years 73 and 76; and now he says, 72 and 75; and I appeal to the House of Commons, whether he did not mend his Affidavit after he had sworn it.

A Prisoner may bring Evidence to prove the Witness gave a different Testimony before the Justice of Peace, to what he gives in Court.

Sir *W. Jones*. As to what Evidence is before your Lordships, it is in your Breasts what you will communicate to my Lord *Stafford*; but for this Evidence he speaks of, as remaining in our Hands, that admits of another Consideration: Whatever those Affidavits were, they were taken for the Information of the House of Commons, who are the Prosecutors. Now if my Lord had produc'd any Evidence, that this Witness had depos'd before a Justice of Peace contrary to what he says now, there might have been Reason to have look'd after these Affidavits; but to desire them to be produc'd on a bare Suggestion that there is a Variance, is unreasonable.

Lord *Stafford*. If these Gentlemen, that are Managers, will aver there is no Variation, I will submit: Nay, if they will say, it was not debated in the House of Commons whether he shou'd mend or no.

L. H. S. What say you to it, Gentlemen?

Page 625.

Sir *W. Jones*. What was done in the House of Commons, does not become us, that are Members, to disclose; but we will admit, that in the Depositions, made before the Justice of Peace, there was a Year put down, which the Witness finding he was mistaken in when he had look'd over his Papers, desir'd next Day to mend it.

L. H. S. Gentlemen, since tis insisted on, that there is a Variation in the Deposition from what he swore at first, what can you say why he shou'd not have the Avail of his Exception?

Sir *W. Jones*. We are not conscious there is the least Variation, and are confident, if the Thing were produc'd, it wou'd turn to my Lord's Prejudice: But this may be a Precedent for the future, and therefore we cannot, without resorting to the House, consent to deliver any Thing the House took for their Information.

Mr. Serj.

Mr. Serj. *Maynard*. Let him instance in Particulars, and make out his Evidence, not feign Things to put off the Cause; for ought I see, 'tis to no other End: And 'tis a Jesuitical Trick I think.

L. H. S. It is usual, in these Cases, for the Gentlemen of the House of Commons to stay till the Lords are withdrawn, and expect their Resolution; perhaps they may so order it, that you need not go back to the House.

Sir W. *Jones*. Before your Lordships withdraw, I desire it may be observ'd, that as to the Variation of the Year we do admit it; but as to what my Lord says of the Affidavit being contrary to what he swears to Day, let him instance wherein, perhaps we may admit it, or answer it, or take it into farther Consideration: But to make so general an Allegation, we submit it whether such a Suggestion ought to be regarded.

L. H. S. Is there any farther Variation, besides the Variation of the Year?

Lord *Stafford*. I believe, in my Conscience, there is, from what I have heard.

L. H. S. How easy a Matter were it to expedite this Process, by allowing the Prisoner his Demand in this particular.

Mr. *Foley*. It is not in our Hands here: If the House of Commons will order it, it may be done; we cannot order it our selves.

Mr. *Powle*. This is a Paper that does properly belong to the House, and how far the Precedents of this may reach in other Cases, I think is worthy the Consideration of the House; therefore we cannot presume to offer any Thing in it, till you give us Leave to resort thither.

Then the Lords withdrew, and after an Hour and half, return'd.

The Lord High Steward acquainted the Prisoner, That their Lordships found he had an Order two Years ago to have Copies of their Journal, and if he wanted any Thing that was there, it was his own Fault: However, they had order'd their Journals to be brought into Court, that he might make what Use of them he saw fit; but

The Court think themselves under no Obligation to assist the Prisoner with the Depositions taken by a Justice of Peace.

as for *Turberville's* Affidavit taken before a Justice of Peace, they did not find any Obligation, as a Court, to concern themselves in that Matter, but he must provide himself as well as he cou'd, they cou'd not help him in it: But since his Lordship had intimated he was weary and spent in making his Defence already, they wou'd not put him upon proceeding in it now, but give him Leave to recollect himself till to Morrow.

Lord Stafford. I had so little Sleep last Night, I desire I may not come till ten.

Page 627.

L. H. S. Are you sure you can be ready then?

Lord Stafford. I shall not be so ready as I shall be next Day.

L. H. S. Gentlemen of the House of Commons, in a Case of this Importance, where is the Inconvenience if there shou'd be a Day's Respite.

Sir W. Jones. Your Lordships do not expect we shou'd consent to put off the Tryal?

L. H. S. I ask only what Inconvenience it is?

Sir W. Jones. Your Lordships are Judges, and will do as you think reasonable; but it is unusual and unprecedented, when the Prosecutors have given an Evidence, that the Prisoner shou'd have a farther considerable Time to give his Answer to it.

L. H. S. My Lord *Stafford* had two Days Time to answer the Evidence given against him.

Sir W. Jones. That was an Evidence of twenty eight Articles, and after an Examination of many Days; this but upon two Heads; but as we do not expect your Lordships shou'd take your Measures from our Desires, much less do we expect you shou'd do it at the only Instance of the Prisoner; especially after such Attempts have been made to suborn and destroy the Witnesses: Therefore we desire your Lordships will go on in the Tryal to Morrow.

L. H. S. You shall know their Lordships Pleasure when they are withdrawn.

Then the Lords withdrew.

A Message was sent from the Lords to the Commons, to acquaint them the House had order'd the Prisoner to be brought to the Bar at Ten
the

the next Morning; then the Commons adjourn'd to Eight the next Morning.

Thursday the 2d of *December*, 1680, the Lords, being met, adjourn'd to *Westminster Hall* about Ten a Clock, and the Lord High Steward acquainted the Prisoner that this was the Time for him to proceed in his Defence. Third Day of the Tryal.

Sir W. Jones. That my Lord *Stafford*, and all that are present, may have full Satisfaction, the Affidavit of *Turberville* is in the Hands of *Sir William Poltney*, a Member of this House, and if his Lordship please it shall be produc'd.

L. H. S. It is very honourably done of the House of Commons, and my Lord *Stafford* hath no manner of Exception left him.

The Lord *Stafford* desir'd *Turberville* might be call'd, and ask'd when was the last Time he spoke with his Lordship, and *Turberville* answering, in *November*, 1675, my Lord said, that being six Months since his Testimony, was not to be admitted; but his Lordship was acquainted that the Treasons he was impeach'd of were against the 25th of *Edward III.* and the Common Law, and there was no Limitation of Time as to the Prosecution upon either: And that even upon the 13 *Car. II.* where the Offence amounted to Treason, there was no Time limited; for that Limitation extended only to the lesser Crimes there enumerated.

Then his Lordship desir'd *Stephen Dugdale* might be set up again. Page 629.

Lord *Stafford.* Did he know of the Plot sixteen Years ago?

Dugdale. There was a general Word amongst us, that we must be provided, against the King's Death, with Men and Arms.

Lord *Stafford.* Did he hear that I was to be one amongst them?

Dugdale. I do not remember that I did.

Lord *Stafford.* What Provision of Arms was made?

Dugdale. I did not hear of any certain Number then, but I have heard, of late, that there was 30000 Arms provided beyond Sea, and I have

heard *Gavan* say, they shou'd have at least 200000 Men to assist them.

Lord Stafford. 'Tis strange there shou'd be 200000 Roman Catholicks rais'd, when there are not 20000 in *England* that can bear Arms.

L. H. S. They might come from beyond Sea.

Lord Stafford. How long since is it I spoke first to him about this Plot?

Dugdale. The first Time, to my Remembrance—

Lord Stafford. I beseech you, my Lords, we may have no Remembrance, but that he may swear positively.

L. H. S. No Man can swear otherwise than according to his Remembrance.

Lord Stafford. When a Man's Life and All is at Stake, if they do not swear positively, who can make a Defence?

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Dugdale. It was about *August* or *September*, 78.

Lord Stafford. I desire he may be positive, whether it were in *August* or *September*.

Dugdale. I dare not be positive as to that, but one Time was the 20th or 21st of *September*, 78.

Lord Stafford. As to the Consult, when such and such were present, and he says the King's Death was resolv'd on, When was that?

Dugdale. It was either the latter End of *August* or the Beginning of *September*.

Lord Stafford. Was it within five Days of the End of *August*, or five Days in the Beginning of *September*, there is the Space of ten Days; sure that is Latitude enough.

Dugdale. I cannot be positive; I did not then intend to reveal the Plot, or I might have given you better Satisfaction.

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Lord Stafford. How many Days will your Lordships understand, the Beginning or End of a Month to be.

L. H. S. I can't tell how much their Lordships will understand by it till they are withdrawn; Will your Lordship stand still for that?

Lord Stafford. He swore, at the Tryal of Sir *George Wakeman*, or the Jesuits, that there was a Consult at my Lord *Aston's* at *Tixall*, in *August*, and I was one.

Dugdale.

Dugdale. I do say there was a Consult at *Tixall* in *August*, but I did not charge your Lordship positively to be there then.

Lord Stafford. I think you did, and I can prove it by Witnesses.

The Lady Marchioness of *Winchester* was call'd, (the Prisoner's Daughter.)

She depos'd, That *Dugdale* did say, at Sir *George Wakeman's* Tryal, that he was to receive Orders from my Lord *Stafford* in *June* or *July*, when he was to come down; and that my Lord was at a Consult at *Tixall* in *August*, and that he did not name *September* then.

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And Mrs. *Howard* depos'd, That *Dugdale* testify'd, at the Tryal of Sir *George Wakeman*, that my Lord *Stafford* came down in *June* or *July*, and was at the Consult in *August*; and she depos'd farther, that they went to that Tryal on purpose to observe what was said, and had kept it in their Minds ever since.

Dugdale. I suppose there were a great many more at the Tryal than those two Ladies, who can remember I said no more than I do now.

Lord Stafford. I have brought two Witnesses to aver, he said I was there at a Consult in *August*: Now I can prove I was not there the whole Month of *August*. — And not till the 12th of *September*; but if I name any of the House of Peers, as my Witnesses, does that prevent their being Judges?

One may be both Judge and Witness.

L. H. S. No, my Lord, they may testify for you, and yet remain in the Capacity of Judges. My Lord *Stafford* had a great many Witnesses that were Peers.

Lord Stafford. I desire, as my Witnesses did not hear, Yesterday, what the others said, so they not hear what mine say.

The King's Witnesses ought not to be debar'd hearing what the Prisoner's Witnesses depose.

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L. H. S. It was not well your Witnesses were not here then, for if Witnesses were to confront one another, shall they not hear what one another say.

The Lord Stafford
calls his Witness-
s.
S.R.

Then *Thomas Bonny* appear'd as a Witness for my Lord.

He depos'd, That he was Servant to my Lord *Worcester*, and my Lord *Stafford* being at the *Bath* in *August*, 78, my Lord *Worcester* did, on the 17th of that Month, being his Wedding Day, send his Coach to *Bath* for my Lord *Stafford*; and that my Lord *Stafford* staid at my Lord *Worcester's* till the next Day, and then return'd to the *Bath*; and the 31st of *August* my Lord *Stafford* came to my Lord *Worcester's* at *Badminton* again, and upon *Monday* the 2d of *September* set out from thence for *London*.

Thomas White, another Servant of my Lord *Worcester's*, appear'd.

Lord Marquess of *Worcester*. My Lord *Stafford* desir'd his Witnesses might not be ask'd what Religion they were off, but I desire all my Servants may be ask'd, for I keep none but Protestants.

Thomas White depos'd, That he was my Lord *Worcester's* Coachman, and fetch'd my Lord *Stafford* from *Bath* to his Lord's at *Badminton* the 17th of *August*, being his Lord's Wedding Day, and that the 2d of *September* he drove my Lord *Stafford* towards *London*.

Richard Bevan, my Lord *Worcester's* Groom, appear'd.

He depos'd, That my Lord *Stafford* was at *Badminton* the 17th of *August*, being my Lord *Worcester's* Wedding Day.

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My Lord Marquess of *Worcester* depos'd, my Lord *Stafford* was at his House the 17th of *August*, and he believ'd he set out the 2d of *September* for *London*, as his first Servant had depos'd.

My Lord *Stafford* desir'd *Dugdale* might be call'd again, and he appear'd.

Lord *Stafford*. When did I offer him the 500*l.* to kill the King, and what Day does he say the Race at *Etching-Hill* was?

Dugdale. It was the 20th or 21st of *September*, at his Chamber at *Tixall*, and the Race was about that Time.

Lord *Stafford*. 'Tis very true, the 20th of *September* this Fellow was in my Chamber, he did serve

serve my Lord *Aston* as a Bailiff; and the Morning the Race was, my Man came and told me, *Stephen Dugdale* desir'd I wou'd ask my Lord *Aston* Leave for him to go to the Race, for my Lord was angry with him already for meddling in Races, and he dare not ask himself: I bid my Servant call him in, and I ask'd him some Questions about the Race, and told him I wou'd get Leave of my Lord for him; and accordingly I went to my Lord *Aston*, and told him, I was sending my Servant before to the Race, (having some little Concern in it my self) and desir'd my Lord he wou'd let *Dugdale* shew my Man the Way, and they went before; I had no other Discourse with him.

L.H.S. Was your Lordship never alone with him in your Chamber?

Lord *Stafford*. No, never in my Life; and he says, my Servants used to come for him, I profess it is all false.

Dugdale. My Lords, I was in my Chamber, and was busy that Morning, when my Lord sent for me by his Page, or one that waits on him in his Chamber, and when I went the Page was in the Chamber, and he order'd him to go out.

Nicholas Furnese, my Lord *Stafford's* Man, appear'd.

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L.H.S. Do you remember *Dugdale* was in your Lord's Chamber that Morning *Etching-Hill* Race was?

Furnese. My Lord, about Eight or Nine that Morning, as I was going to my Lord's Chamber, through my Lord *Aston's* Hall, *Dugdale* came to me and desir'd me to ask my Lord to get him Leave to go, for he said, my Lord *Aston* was angry with him, and he dare not ask himself; that one Mr. *Fox* was to be at the Race, and had a great deal of Money to Bett, and several People wou'd give Money to Bett, and so it wou'd be a great Loss to him if he did not go; accordingly I spoke to my Lord, and my Lord bid him come in, and ask'd him several Questions about the Race, and told him, he wou'd speak to my Lord *Aston* for him; and when my Lord was dress'd, he went out of

The TRIAL of

his Chamber to ask my Lord *Aston*, and bid me get ready to go to the Race; and coming down the back Stairs, my Lord met me, and bid me go along with *Stephen Dugdale* (for he had ask'd Leave for him to go) and he would show me the Way to *Etching-Hill*; so about Twelve we got to the Race, and some Time after I went to the Place where my Lord was to dine, to wait for his coming, and left *Stephen Dugdale* betting: We return'd that Night to my Lord *Aston's*, and early next Morning set out for my Lord's own House.

L. H. S. Did not you leave *Dugdale* behind you, in the Chamber, when your Lord bid you go dress your self.

Furnese. I conducted *Dugdale* into the Chamber, and staid with him all the Time he was there: My Lord went to my Lord *Aston* before I went out of the Chamber.

Dugdale. When I came into the Chamber, my Lord was getting up, and order'd both his Servants out of the Room.

Furnese. My Lord never bid me go forth that Day or any other in my Life, when any was in the Room. — He depos'd farther, that he had liv'd with my Lord these fourteen Years, that he was a Native of *Brussels*, and of the Roman Catholick Religion.

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George Leigh, another of my Lord *Stafford's* Servants, appear'd.

He depos'd, That he remember'd my Lord *Stafford* was at my Lord *Aston's* that Morning *Etching-Hill* Race was, but he did not remember *Dugdale* was in his Lord's Chamber that Morning.

L. H. S. Did you ever come from my Lord *Stafford* to bid *Dugdale* come to him?

Leigh. I don't remember that ever I did.

Dugdale. I'm sure he has come to my Chamber for me to go to my Lord.

Furnese was call'd again.

L. H. S. Did my Lord *Stafford* ever send you for Mr. *Dugdale* in his Life?

Furnese. Never, my Lords.

Lord

Lord *Stafford*. He was such an impudent lying Fellow I cou'd not endure him; I hope your Lordships won't think I employ'd such a Fellow as this, who soon after run away from my Lord *Aston's*.

L. H. S. Did you never see my Lord *Stafford* and *Dugdale* together, *Furnese*?

Furnese. Never in my Life.

L. H. S. Why, you saw them together when you brought him to the Chamber.

[*Here the Audience laugh'd.*] *Furnese*. Never alone.

Lord *Stafford*. I did not think I was in a Cock-pit or a Play-House: But I desire to prove that *Dugdale* run away from my Lord *Aston's*.

Thomas Sawyer appear'd.

He depos'd, That he had been fix Years Servant to my Lord *Aston*; and he knew that *Dugdale* went away from my Lord *Aston's*, for Debt, the latter End of *November* or the Beginning of *December*, 78, and that at *Heywood* he was taken up by the Watch and brought back, by some Justices of Peace, to *Tixall*, and when they had spoke to my Lord, they resolv'd to carry him to Jail: And *Dugdale* desir'd me to go to my Lord *Aston*, and perswade him to own him for his Servant, for he was so much in Debt, that he shou'd be undone if he went to Jail; and I met Mr. *Phillips*, the Parson of the Town, who told me he had been with my Lord to desire him to own him, and he said, he wou'd not own him as his Servant; it was his own Act and Deed: So Mr. *Phillips* and I came back to the Ale-House where *Dugdale* was, and told him; and he rose up and swore he wou'd be reveng'd of my Lord *Aston* if ever it lay in his Power. — And another Time, being in the Serjeant's Hands at *Stafford*, he promis'd to pay me 29*l.* he ow'd me, such a Day, and I came, but he was not so good as his Word: This was three or four Days before he began to peach: And he told me, it was reported he shou'd be a Peacher, and have 200*l.* for informing that there were fourteen Priests in the Country, but, taking a Glass of Drink in his Hand,

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Hand, says to *Thomas*, By God, I wish this may be my Damnation and my Poison, if I know of any Plot or any Priests.

L. H. S. Have you not seen *Dugdale* in Father *Ewers's* Company at *Tixall*?

Sawyer. Yes, I have.

L. H. S. Did not you think *Dugdale* a stout able Fellow, at *Tixall*?

Sawyer. No, he never was accounted so.

L. H. S. Did you think him an honest Man, or a rich Man?

Sawyer. No truly, my Lords, he has accounted with my Lord *Aston*, and reckon'd Workmens Bills as paid, when they have not been paid some of the whole Years.

L. H. S. Do you remember the Day my Lord *Aston* came to *Tixall*?

Sawyer. He came the 12th of September.

Mr. *Treby*. What Religion are you of?

Sawyer. Of the Church of England.

Mr. *Philips*, the Minister of *Tixall*, appear'd.

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He depos'd, That whereas *Dugdale* had sworn he receiv'd a Letter concerning the Death of Sir *E. Godfrey*, dated the 12th, and that he communicated that Letter to Mr. *Sambridge*, and the Deponent the Tuesday after, the Deponent averr'd, that he never heard of the Death of Sir *E. Godfrey*, either from *Dugdale* or any other, 'till it was publickly known.

Lord *Stafford*. I ask him, if he did not go from *Dugdale* to my Lord *Aston's*, to know if he wou'd own him for his Servant?

Mr. *Philips*. Yes, he requested me to go, tho' I was loth to go, having no Familiarity or Interest in my Lord *Aston*. Upon *Dugdale's* Importunity, I went, and desir'd my Lord he wou'd own him for his Servant, and it might prevent his going to Goal; but my Lord reply'd, It was his own Act and Deed, he wou'd have nothing to do with him, and that the Justices might do what they wou'd with him: The Justices were Sir *Walter Baggot*, and Mr. *Kinnerfly*.

Lord *Stafford*. I desire the Gentlemen of the House of Commons will permit Sir *Walter Baggot*, who

who is a Member, to depose, whether he did not apprehend *Dugdale*, and upon what Account?

Sir Walter Baggot. My Lords, Mr. *Dugdale* was taken at an unseasonable Time of Night, and brought to me next Morning by the Watch; and I took him away to *Stafford*, where there were several other Justices of the Peace; but my Lord *Aston's* House being in the Way to *Stafford*, I call'd upon him, to know if Mr. *Dugdale* were not his Servant; he told me, he was no Servant of his, and he wou'd not receive him; upon which I, and another Justice of Peace that was with me, took him to *Stafford*. The Occasion of our Meeting there, was to summon in the Militia upon an Alarm of the Papists being risen in *Derbyshire*: At *Stafford* we tender'd the Oaths of Allegiance and Supremacy to *Dugdale*, which he took: Afterwards, we told him, he was a likely Man to know something of the Plot, and it was a proper Time to discover it to us, that were Justices; but he at that Time deny'd the Knowledge of it.

Lord Stafford. My Lords, you observe, my Lord *Aston* wou'd not receive him; and surely, if my Lord *Aston* had been conscious *Dugdale* was engag'd in a Plot with him, he wou'd not have disoblig'd him.

Mr. Kinnerley also depos'd, That they tender'd *Dugdale* the Oaths, and he took them; and deny'd he knew any Thing of the Plot.

Sir Tho. Whiggrave, another of the Justices, depos'd to the same Effect; and added, That after *Dugdale* had taken the Oaths, he told him, he look'd upon him as one of them, and wou'd do him any Kindness he cou'd: And *Dugdale* answer'd, He was born of Protestant Parents; and tho' it was his Misfortune to fall into the Houses of Papists, he never lik'd their Religion: Whereupon the Deponent told him, He was confident he must know of the Plot; and he had now an Opportunity of serving his own Interest, and obliging his King and Country, by the Discovery; but *Dugdale* reply'd, *As he hop'd to be sav'd, he knew nothing of it.*

Lord

Lord Stafford. I shall now prove, that Dugdale hath endeavour'd to perswade People to swear against me falsely.

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William Robinson appear'd.

He depos'd, That he was an Upholsterer, and liv'd near Worcester: That he met Mr. Dugdale at London, near Charing-cross, about Midsummer was Twelve-Month, and Dugdale carry'd him to a Publick House and treated him; and ask'd him, why he was so dejected? That the Deponent reply'd, He was poorer than he used to be: Whereupon Dugdale told him, he shou'd not want any Money he had; and if the Deponent wou'd be rul'd by him, he wou'd furnish him with Money; and Dugdale pull'd his Handkerchief out of his Pocket, in which there was eight or 9*l.* and bid the Deponent take Money if he wanted, (but he took none.) Then Dugdale told the Deponent, he cou'd furnish him with Money, if he wou'd come in as an Evidence against my Lord Stafford; but the Deponent said, he did not know my Lord.

Mr. Foley. Did he see Dugdale any more, or was there an End of it?

Robinson. I saw him no more.

John Morral, a Barber of Ridgley in Staffordshire, appear'd.

L. H. S. What can you say to Dugdale?

Morral. My Lords, the 6th of August was Twelve-Month, Mr. Dugdale sent for me to the Whitehorse at Ridgley; and, in Conversation, he swore, God damn him, I knew as much of the Plot as he. I reply'd, If he knew no more than I, he knew no more than my Lord Mayor's Great Horse: Then he took me aside; Come, says he, you are a poor Man, I can put you in a Way, you may live gallantly; I will give you fifty Pound in Hand, if you will do so and so.

L. H. S. What do you mean by so and so?

Morral. To swear against Mr. Howard, Sir James Symonds, Mr. Herbert Ashton, my Lord Aston's Brother, and several other Gentlemen of the Country.

L. H. S. Did he offer you Money to swear against my Lord Stafford?

Morral.

Morral. I did not hear him mention any Thing of him.

L. H. S. What were you to swear against those other Gentlemen?

Morral. That they were at a Meeting at Mr. *Herbert Aston's*, upon the Conspiracy of the Plot.

Samuel Holt, a Blacksmith of *Tixall*, appear'd.

He depos'd, That *Dugdale* sent for him to the *Star* at *Stafford*, and said, he must speak with him in private; and then told him, if he wou'd swear *Walter Moor* carry'd *Ewers* away, he wou'd give him 40 l. and bid him not be afraid of my Lord *Aston*, for he wou'd get him to *London*, and place him, that where he got one Shilling, he shou'd get five.

Mr. *Lydcot*, a Fellow of *King's College*, and late Secretary to the Lord *Castlemain*, appear'd.

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Lord *Stafford*. What did *Dugdale* swear at the Tryal of the five Jesuits, in Relation to the News of Sir *E. Godfrey's* Death.

Lydcot. *Dugdale* did then, and at the Tryal of Sir *George Wakeman*, swear, That a Letter came down to my Lord *Aston's* on the *Monday*, and he imparted it on the *Tuesday* after, at the Ale-house, to one Mr. *Sambridge* and Mr. *Philips*. I took Notes of those Tryals.

Mr. *Charles Gifford* was sworn.

He depos'd, That he was summon'd as a Witness at the Tryals of the five Jesuits, *Langborn's* and *Wakeman's*, and that he took Notes.

L. H. S. What did Mr. *Dugdale* swear then?

Gifford. At the five Jesuits Tryals, he swore, He receiv'd a Letter sent to *Ewers*, (which he interpreted) and it spoke of the Death of the Justice of Peace; and that he went to an Ale-house, and imparted it to Parson *Philips* and my Lord *Aston's* Kinsman, Mr. *Sambridge*; and at Sir *George Wakeman's* Tryal, he said much the same.

Mr. *Sambridge* appear'd, and being deaf, the Black Rod was sent to put the Question to him.

Black Rod. Did Mr. *Dugdale* tell you on the *Tuesday*, that Sir *E. Godfrey* was murder'd the *Saturday* before?

Mr.

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Mr. *Sambridge*. No, he never told me of any such Thing upon my Salvation : I never heard of it 'till *Friday* or *Saturday*, when he was found.

L. H. S. Was he with *Dugdale* at the Alehouse on the *Monday*, *Tuesday*, or *Wednesday* that Week ?

Mr. *Sambridge*. Not as I know of.

Lord *Stafford*. What Reputation had *Dugdale* in the Country ?

Mr. *Sambridge*. Oh ! The wickedest Fellow that ever liv'd : I know a great deal of it myself, and hundreds will say as much.

L. H. S. What Religion are you of ?

Mr. *Sambridge*. I was never a Papist in my Life, nor a Fanatick.

L. H. S. What Ill in particular do you know of *Dugdale* ?

Mr. *Sambridge*. He was very abusive to the Clergy and other, especially to Mr. *Philips* ; and wou'd say, the Clergy of *England* were a lowd Clergy, and a Pack of Rogues.

The Prisoner desir'd *Otes* might be call'd again, and he appear'd.

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Lord *Stafford*. I desire Mr. *Otes* may be ask'd, when was the first Time he saw me in his Life ?

Otes. As I remember, it was in *June*, at Mr. *Fenwick*'s Chamber, when he receiv'd his Commission to be Pay-Master General of the Army ; and it was deliver'd to him by the Name of Mr. *Howard* of *Effingham*.

L. H. S. Did you read it ? How was it sign'd ?

Otes. I read it ; and, I think, it was sign'd as the rest, *Johannes Paulus Oliva* ; but I can't be positive.

Lord *Stafford*. I declare, in the Presence of God, I never saw this Man in my Life ; nor did I ever go by any other Name than *Stafford*, since I had the Honour to be a Peer : I never heard of *Fenwick* the Jesuit, or *Thompson*, the Name they say he went by, 'till the Plot was discover'd, and he was taken. I desire I may have out of the *Journals* the Deposition on which I was committed.

Then the Clerk read that Part of the *Journal*, which was to this Effect :

The

' The 25th of Oct. 1678, The Lord *Stafford* acquainted the House, he heard there was a Warrant issu'd by the Lord Chief Justice, to apprehend him.

' The Lord Chief Justice being present, said, That about Nine last Night he receiv'd a Letter from the Speaker of the House of Commons, dated from the Chair, to come to the House about Business of Moment: That he attended the House, and they desir'd him to issue Warrants for the apprehending the Lords *Powis*, *Stafford*, *Arundel*, *Peters*, and *Bellasis*: And that having taken the Examination of *Titus Otes*, he issu'd Warrants against them.

The Journal of the House of Lords read as Evidence for the Prisoner.

' Upon this, the Examination of *Otes* was read, charging my Lord *Stafford* with High Treason. The Lord *Stafford* deny'd the Fact, and then withdrew; and a while after, the House was inform'd, his Lordship wou'd render himself to the Chief Justice.'

L. H. S. This is all that is in the Lord's *Journal*.

Lord *Stafford*. I desire my Lord Chief Justice may be ask'd, where the Affidavit is he took of *Otes*?

Then the Lord High Steward demanded of *Otes*, if he had a Copy of his own Examination.

Otes said, He had a Copy, but he cou'd not swear it was an exact Copy; however, upon Perusal of it, he averr'd, That the Contents of his Copy were true; and, by the Consent of the Managers and the Prisoner, it was admitted to be read.—

[Clerk reads.]

The Examination of Titus Otes. Clerk, taken by us this 24th of October 1678.

L. H. S. It was read the 25th, the next Day, in the House of Lords.

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The Substance of the Examination was, That *Otes* had seen Commissions for Civil and Military Employments at Mr. *Langborn's* Chambers, under the Seal of *Johannes Paulus Oliva*, Father-General of the Society of *Jesus*, at *Rome*, directed to the Lords *Arundel*, *Powis*, *Bellasis*, and *Peters*, and to Mr.

Otes's Examination read.

Mr. *Coleman*; and that they accepted their respective Commissions: That in *May, June, July,* and *August* then last, he saw several Letters sign'd *Stafford*; whereby it appear'd, the Lord *Stafford* was in this Conspiracy against his Majesty; and that he had return'd several Sums of Money to the Jesuits to carry on the Design; the Letters were directed to *Fennick* and *Ireland*: and that he saw another Letter to him from the same Persons, about a Difference between the *English* College at *Lisbon*, and the Jesuits.

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Then my Lord *Stafford* desir'd Sir *Philip Lloyd* might be ask'd, whether ever he heard *Otes* deny, upon Oath, that he knew there were any Lords concern'd in the Plot? Sir *Philip Lloyd* answer'd, He heard of such a Rumour, but could say no more.

My Lord *Stafford* appeal'd to the Lor's of the Council for the Truth of it. The Lord Chancellor said, He heard no such Thing.

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My Lord *Berkley* said, He did not hear any such Thing before the Council; but that the Lord Chancellor ask'd *Otes* at the Bar of the House of Lords, if he wou'd accuse any other Person of what Quality soever? And he was encourag'd by their Lordships to accuse them: And *Otes* answer'd, He had no other Person to accuse in Relation to *England*; but in Relation to *Ireland*, he had: That this was after he had accus'd my Lord *Stafford*, and before he had accus'd the Queen.

Lord *Stafford*. I desire your Lordship to take Notice, That after this, he accus'd the Queen. And at first, it may be observ'd, he only accus'd me of some Letters, sign'd *Stafford*; but when he had consulted with himself, and possibly with some others, then he comes and gives Evidence of my having a Commission. At this Rate, he may come to Morrow, and know a great deal more: And I challenge Dr. *Otes*, at the Day of Judgment, to say, if ever he saw me in his Life, till I was committed. And if ever I went by any Name but that of *Stafford*, I will be content

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to die immediately. I desire *Dugdale* may be call'd again.

Dugdale stood up.

Lord Stafford. I would know, if he did not in his Deposition before *Capt. Lane*, and *Mr. Vernon*, say, That in the Beginning of *September* I told him of the Design, which must be before the 20th or 21st, mention'd in the Journal.

Then *Dugdale's* Information before *Mr. Lane* and *Mr. Vernon*, as it was enter'd in the *Lords Journal*, was order'd to be read, wherein it appears he depos'd, ' That presently after *Howard*, Almoner to the Queen, went beyond Sea, he was told by *George Hobson*, Servant to the Lord *Alton*, that there was a Design then intended for the Reformation of the Government to the Romish Religion.—That in the Beginning of *September* 78, he met my Lord *Stafford* near my Lord *Alton's* Gates, and my Lord *Stafford* said, It was sad that they were troubled, and cou'd not say their Prayers but in a hidden Manner, but suddenly there would be a Reformation to the Romish Religion.—That on the 20th of *September*, the *L. Stafford* told the Informant there was a Design in Hand; and if he would undertake the Design, he should have a good Reward, and make himself famous: That the same Day, immediately after, the Informant went to *Mr. Ewers's* Chamber, and ask'd him what the Lord *Stafford* meant by those Words? And after *Ewers* had made him swear Secrecy upon his Knees, he told him, It was to be instrumental with others in taking away the King's Life, &c. and that *Hobson* also told him, the Design was as well to kill the Duke of *Monmouth* as the King, &c.

Lord Stafford. He swears, That presently after the Almoner went over, *Hobson* told him of the Design. Now the Almoner went over three Years before 78, when the Proclamation came out to banish the Queen's Servants for being Papists.

Dugdale. My Lords, I said that *Hobson* told me, that presently after the Almoner *Howard* went over, there was such a Design carrying on: I did not know *George Hobson*, till he became Servant to my Lord *Alton*, which was in the Year 78.

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Lord

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Dugdale's Examination, taken by the Justices, as it was enter'd in the *Lords Journal*, read as Evidence for the Prisoner.

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Lord *Stafford*. It is said, That presently after the Almoner went over, *Hobson* told him so.

Then the Information was read again.

L. H. S. Do you know when *Howard* the Almoner went over ?

Dugdale. I know it but by Report ; I make that no Part of my Oath.

L. H. S. My Lord, You must not make a Strain to make a Mistake.

Lord *Stafford*. God's Life, Is three Years a Strain ?

L. H. S. Go on, my Lord ; Notice will be taken of your Objection.

Then *Turberville* was call'd again, and appear'd.

Lord *Stafford*. I desire his Affidavit may be produc'd where the Mistake was.

Turberville. I declar'd I cou'd not be positive as to a Year, I own every Thing else in it.

Sir *William Poultney*. I have the Affidavit, my Lords ; it was taken before me and Sir *Thomas Bringer*, another Justice of the Peace, in the Speaker's Chamber : He declar'd there, That he came to my Lord *Powis* in the Year 73 ; and that he came into *England* in '76 : The next Morning he came to me and told me, that searching among his Papers, he found the precise Time he went to live with my Lord *Powis* was 1672 ; and the Time of his Coming to *England* was 1675 : And desir'd the House of Commons might be acquainted with it, that this Circumstance of Time might be alter'd : And the House did order, that he shou'd mend it ; and he made 73 72, and the 76 75 ; and then he swore it again *de novo*.

E Pag. 649.

L. H. S. Did Mr. *Turberville* correct the Mistake first, or was it found out by others ?

Sir *Will. Poultney*. He came and told me of it the next Morning. I did not know he was mistaken.

Mr. *Turberville*. By the Oath I have taken, I did correct it myself ; and no Body mov'd it to me.

L. H. S. How came you to know you were mistaken ?

Mr. *Turberville*. I was searching for a Letter I receiv'd from my Lord *Stafford* : I mis'd of that, but found my Discharge from the *French* Army, whereby I saw my Mistake.

The

The Discharge was produc'd, dated at the Camp before *Air*, 4. *August*, 76.

Lord *Stafford*. My Lord, He says he convers'd with me a Fortnight together in *France*, and I propos'd the Killing of the King to him; and says, he remembers this particular Circumstance, that when he came to me I had the Gout in my Feet: I desire my Servant may be call'd again as to that, for I have not been lame a Moment these Forty Years.

Mr. *Turberville*. He told me it was the Gout; he had a great Lameness, so that he cou'd not go from one Place to another; and here are several People can attest he has been lame in less Time than he says:

Furnese appear'd again.

L. H. S. Was Mr. *Turberville*, or Father *Anthony Turberville*, with your Master while he was in *France*.

Furnese. I was with my Lord all the Time, and I never saw either of them, or heard the Name.

Lord *Stafford*. Was I lame while I was in *France*?

Furnese. My Lord was there three Months: He was at *Paris* in *October* and *November*, in *December* at *Rhoan*, and in *January* we came to *England*; and I don't remember my Lord was lame any Part of the Time.

L. H. S. Do you remember, *Furnese*, Mr. *Turberville*, or any other Servant you saw there?

Turberville. Truly, I don't remember: I might forget him.

Then *Leigh* the Page was call'd again.

L. H. S. Were you all the Time in *France*? Did you ever see *Turberville* there?

Leigh. I was with him all the Time, but did never see *Turberville*: Nor has my Lord had the Gout ever since I was with him, which is seven Years almost.

Lord *Stafford*. *Turberville* says, I sent him a Letter to *Diep*, which he can't find. I desire to know what were the Contents of that Letter.

Turberville. That I shou'd not stay for him at *Diep*, but make what Haste I cou'd to *London*, and meet him there; for he had appointed a Yacht to come to *Calais* for him.

Lord *Stafford*. Did I send you Word that Count *Grammont* came over with me?

Turberville. Yes, to the best of my Remembrance.

Lord *Stafford*. Now I shall prove I did not come by *Calais*, but by *Diep*; and Count *Grammont* did not come over with me.

Mr. *Wylburn* was call'd.

He depos'd, That in *December* 75, having Occasion to go into *France*, he heard of a Yacht that was sending over to *Diep* for my Lord *Stafford* and Mr. *Henry Sidney*, his Majesty's Envoy, and took the Opportunity of going in it: That the 24th of *December* they weigh'd Anchor, and the 2d of *January* arriv'd at *Diep*; and the Captain hearing the Lord *Stafford* was at *Rboan* expecting him, desir'd the Deponent to write a Letter to him, which he did, and the Lord *Stafford* came to *Diep* the 4th of *January*, and went to *England* in the Yacht.

And *Furnese* and *Leigh*, my Lord's Servants, also depos'd, Their Lord came by *Diep*.

L. H. S. The Question is not whether you came by *Calais*, but whether you writ a Letter to him to *Diep* that you wou'd go by *Calais*?

Lord *Stafford*. He swore Yesterday, that I did come by *Calais*: He did not name the Letter Yesterday, nor in his Information.

Turberville's Examination read.

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Then *Turberville's* Information, that he gave the 9th of *November* 1680, was read; wherein he depos'd, That he became Gentleman-Usher to the Lady *Molineaux*, Daughter to the Earl of *Ponis*, about the Year 1672; that he by that Means liv'd in the Earl's House three Years, and then was perswaded by the Lady, and one *Morgan* a Priest there, to become a Fryer, and to go over to *Doway* to qualify himself for it; but the Informant staid but three Weeks at *Doway*, and then escap'd over to *England* again: Whereupon the Lady and the Earl, and all that had encourag'd him to go, became his utter Enemies, threatening to take away his Life, and got his Brother to disinherit him, which last they accomplish'd: That finding himself Friendless, and in Danger in *England*, he went to *Paris*, where he had a Brother

‘ Brother a Benedictine Monk, who introduc’d
 ‘ him to the Lord *Stafford*, who propos’d the Kil-
 ‘ ling of the King, &c. As he had depos’d at the
 ‘ Tryal. And he adds in the Information, That the
 ‘ Informant going before to *Diep*, the Lord *Stafford*
 ‘ went with *C. Grammont* by *Calais*, &c. That when
 ‘ the Informant liv’d at my Lord *Powis*’s, there
 ‘ used to be Consults of Priests in the Lady
 ‘ *Powis*’s Chamber; among whom the Earl of *Ca-*
 ‘ *stlemain* was one: And that at the breaking up
 ‘ of those Consults, the Informant had seen them
 ‘ break out into an Extasy, saying, *They hoped e’er*
 ‘ *long to see their Religion establish’d, tho’ they had met*
 ‘ *with one great Disappointment, which was the Peace*
 ‘ *struck up with Holland*: And said, That about *May*
 ‘ was two Years, he was present at Mass with the
 ‘ Lord *Powis* in *Vere-street*, and the Earl of *Castle-*
 ‘ *main* said Mass in his Priestly Habits.’

Lord *Castlemain*
 in Popish Orders.

L. H. S. This Affidavit is to the Purpose: It does say absolutely your Lordship went by the Way of *Calais*.

Mr. *Turberville*. What I grounded my Belief of his going by *Calais* upon, was his Lordship’s Letter.

Lord *Stafford*. He does not in this Affidavit say, he believ’d so by the Letter; and besides, Count *Grammont* came by *Diep* too, and came to *England* a Month before me.

John Minhead appear’d.

Lord *Stafford*. I call this Gentleman, to shew how *Turberville* was entertain’d at my Lord *Powis*’s when he came from *Doway* again; because he says he went in Fear of his Life from them.

Mr. *Minhead* depos’d, That *Turberville* lay at my Lord *Powis*’s after he came from *Doway*, and was very well receiv’d there.

Then his Lordship call’d a Witness, to shew his elder Brother had no Estate that cou’d come to him, he being by another Venter; but it appear’d by the Witness, that there was once a Possibility of the Estate coming to him by a distant Remainder, which was dock’d by a common Recovery, upon his Brother’s Marriage.

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Then my Lord *Stafford* call'd Mr. *Lydcot* again, to prove, that my Lord *Castlemain* was not at my Lord *Powis* in the Years 72, 73, or 74 ; when *Turbervile*, in his Information, had sworn he was there.

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Mr. *Lydcot* averr'd, my Lord *Castlemain* was not at my Lord *Powis*'s during these three Years, but when he came to give his Reasons, the Court did not think them conclusive, not being able to understand the Diary that *Lydcot* said he had kept of their Travels, while he liv'd with my Lord *Castlemain*.

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The Lords Adjourn.

The Lords finding it grew late, and that my Lord *Stafford* had more Witnesses to examine, adjourn'd to their House, and gave Notice to the House of Commons, they wou'd proceed in the Tryal at Ten the next Morning.

4th Day.
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Friday the 3d of *December* 1680, The Court being set, the Lord High Steward repeated the Substance of the Evidence the Lord *Stafford* had given the Day before, and directed him to proceed.

The Lord *Stafford* acknowledg'd his Lordship had summ'd it up very equitably, and then call'd *John Porter*, Butler to my Lord *Powis*.

L. H. S. What Religion are you of?

Porter. A Church of *England* Man, my Lords.

Mr. Serj. *Mayn*. The Popish Church of *England*, I believe.

Lord *Stafford*. Pray, my Lords let not this be: I pray they may not deal thus with me.

Serj. *Mayn*. We do not speak it to the Court; we may say what we will among ourselves, we hope?

Lord *Stafford*. Pray ask him what *Turbervile* said to him about his Knowledge of the Plot.

Porter. About a Year since, when I was Butler to my Lord *Powis*, this *Turbervile* used to send for me to a Publick House ; and, amongst other Things, he ask'd me how my Lord *Powis* did; and said, he was mighty sorry for his Affliction, for he verily believ'd, that neither he, nor the rest of the Lords, were in the Plot ; and he believ'd the Witnesses who swore against him were perjur'd: And I answer'd, if there was a Plot, he having been beyond Sea, must know of it.

He

He told me, *As he hoped for Salvation, he knew nothing directly or indirectly against the King's Person, or of the Subversion of the Government; and added, tho' he was a little low at present, and his Friends wou'd not look upon him, yet he hoped God Almighty wou'd never leave him so much, as to let him swear against innocent Men and damn himself.* He has had these Discourses at the Ship Ale-house in *Lincolns-Inn Fields*, the *King's Head Tavern* in the *Strand*, and another Time at the *Golden-Ball* in the *Strand*.

Turberville. It is all false. I own I have said, *I believ'd my Lord Powis was the least concern'd of any, and I hoped it wou'd prove so.*

L. H. S. How came *Turberville* to talk of these Matters?

Porter. He did it voluntarily, as we were talking of my Lord *Powis*, and the Lords in the *Tower*; and some of his Friends, he said, were fearful he wou'd come in against them, he being reduc'd to Poverty.

Mr. Talden, a Barrister of *Gray's-Inn*, appear'd.

Lord Stafford. I wou'd ask him what *Turberville* has said in his Hearing about the Plot?

Mr. Talden. In *February* or *March* last, *Mr. Turberville* and I were talking of the Distractions of the Times, how Trade was ruin'd, and the whole Kingdom out of Order, and he being a little touch'd at some Things that were said, cry'd out, *God damn me, now there is no Trade good but a Discoverer; but the Devil take the Duke of York, Monmouth, Plot and all, for I know nothing of it.*

L. H. S. 'Tis odd he shou'd say it was a good Trade to be a Discoverer, and at the same Time say, he knew nothing of the Plot.

Talden. I understood it, that he curs'd himself, because he knew nothing to discover; and that he wou'd have got Money by it as well as others, if he cou'd.

Turberville. *Mr. Talden* declar'd, Yesterday, he had nothing to say, but what was Hearsay.

Talden. I can say nothing but what I heard him say; but I do declare, what I have said, is true: And Yesterday *Pomel*, who is *Turberville's* Friend,

came to me, and bid me take Heed what I did; and swore, *By God, it wou'd be the worse for me else.*

Lord *Stafford.* If it remain a Doubt whether I came over from *Diep Christmas 75*, I have a Copy of the Warrant for the Yacht to go to *Diep.*

Manager. We admit it.

Lord *Stafford.* I desire Dr. *Otes* may be call'd again.

Otes appear'd.

Lord *Stafford.* He said, that being a Minister of the Church of *England*, he did seemingly go over to the Church of *Rome*: I wou'd know whether he was really a Papist, or did but pretend?

Otes. I did only pretend, I was not really one, I declare it.

Lord *Stafford.* How long was Dr. *Otes* in *Spain*?

Otes. I went to *Spain* in *May*, and came Home again in *November.*

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Council-Books no
Evidence.

Then the Lord *Stafford* desir'd, that the Council-Books might be produc'd, to shew, That *Otes* made Oath before the Council, that he had taken his Doctor's Degree at *Salamanca.* *Otes* answer'd, That he was not asham'd of any Thing he had said or done; but as to what he had said at the Council-Table, his Lordship ought to have produc'd one *Viva Voce* to depose what he said there, for those Books were no Evidence: And the Lord High Steward said, The Books were not Evidence, unless the Clerks wou'd swear what was in them. At length one of the Council Books was produc'd by the Managers for the Commons, but it appear'd to be the wrong Book; and the Lord High Steward demanded why his Lordship had not before procur'd what he wanted from the Council-Table, but gave the Court so much Trouble, and interrupted their Proceedings.

Here happen'd a Quarrel between the King's Witnesses and the Prisoners; and my Lord *Stafford* complain'd, his Witnesses were threaten'd; but it appear'd upon Examination, that Mr. *Talden*, one of my Lord's Witnesses, had told the King's Witnesses, *they were a Pack of Rogues*; upon which *Turberville* had shewn some Resentment.

Then

Then my Lord *Stafford* appeal'd to the Lords of the Council, if *Otes* did not say, at the Council Table, that he went from *Valladoiid* to *Madrid*, and preach'd in the *Jesuits* College there; and *Don John* of *Austria* was one of his Audience.

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Lord Privy Seal. Dr. *Otes* was ask'd before the Council, whether he had seen *Don John* of *Austria* in *Spain*, and he answer'd, one was shewn him who was call'd *Don John*, but he did not know him.

Lord *Stafford*. He says, he saw me receive a Commission, and has seen several of my Letters, I desire he wou'd produce some of them, or any Notes he has taken out of them.

Otes. I cou'd not keep any Letters sent to the Fathers, nor have any Notes out of them, I had but a Sight of them: We keep no Papers but what we communicate to our Superiors; shou'd they have known I had taken Notes out of their Papers, it might have endanger'd my Life.

Lord *Stafford*. Does he know my Hand?

Otes. I have seen my Lord write at *Fennick's* Chamber, and carry'd the Letter to the Post; he writes a mixt Hand, I think but an indifferent one; and I believe I have a Letter of my Lord's by me.

Lord *Stafford*. I don't know where *Fennick's* Chamber was; nor was ever there.

Otes. Will his Lordship say, I never saw him at Dr. *Perrot's*, the Arch Priest of the secular Clergy?

Lord *Stafford*. I do profess, before God, I was never at Dr. *Perrot's* in my Life.

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Otes. My Lord, I was at Dr. *Perrot's* Lodgings, and my Lord *Stafford* came in, and he offer'd me half a Crown to fetch the Doctor, who was abroad, and I told my Lord I was no Porter.

Lord *Stafford*. If ever I saw *Otes* or heard of his Name till the Talk of the Plot, I will confess my self Guilty.

Otes. I went by another Name, and was in another Habit; but he must remember me.

Lord *Stafford*. I must insist upon it that this Man is not a credible Witness; he tells you he did

The Prisoner insists that *Otes* is not a credible Witness, having profess'd his Hypocrisy and Dissimulation with God and Man.

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did seemingly profess the Catholick Religion, and now he professes himself of the Church of *England*, and wears that Habit; now let it be for what Ends soever he pretended to be a Papist, one who dissembles with God Almighty to that Degree, as to take the Sacrament after the Manner of the Church of *Rome*, which your Lordships and the House of Commons have declar'd to be gross Idolatry, is never to be look'd upon as a good Witness: And I appeal to you Lordships, if one who pretends to abhor his own Religion, and engage to such a Height in a Way which his Conscience tells him is Idolatrous, be not a perjur'd Fellow, and incapable of being a Witness: He is no Christian, but a Devil, and a Witness for the Devil: And now, my Lords, were he a Penitent, we shou'd discover it by a strict, sober, peaceful, and pious Behaviour; but it was but last Night that he abus'd the Lieutenant of the Tower, and call'd him Rascal and Jaylor.

L. H. S. What did *Otes* say to you, Mr. Lieutenant?

Mr. Lieutenant. There being a great Crowd of People, I was desiring Mr. *Otes* to keep them down, and he told me they were Witnesses: I said, I believ'd they were not half Witnesses, and desir'd them to keep down; whereupon *Otes* said, I was but a Jaylor; I told him, if it were not for his Coat, and I was out of this Place, I wou'd break his Head; and then he call'd me Rascal.

L. H. S. Mr. *Otes*, this does not become you, 'tis very ill Manners in you.

Otes. I refer my self to the Law, if I have done the Lieutenant of the Tower any Wrong.

Mr. Serj. *Maynard*. It did not become Mr. Lieutenant to tell him, for a Word, he wou'd break his Head.

Mr. Lieutenant. I shou'd not deserve to be the King's Lieutenant, if a Man in another Habit, out of the Court, shou'd call me Rascal and I shou'd not break his Head.

Lord

Lord *Stafford*. I desire *Dugdale* may be ask'd if he was not a Prisoner for Debt in *Stafford*, when he made the first Affidavit.

Dugdale. I was in the Serjeant's Hands, my Lord.

Lord *Stafford*. And I can prove *Otes* was so poor, he begg'd for Six-pence.

Otes. I own I have not had Two-Pence in my Pocket since I made this Discovery.

Lord *Stafford*. And yet at another Tryal he swore he had been 700 *l.* out of Purse.

Otes. My Lords, a Noble Peer of this House did present me with 100 *l.* I had 100 *l.* for my Narrative, and 100 *l.* for taking some Jesuits, and for some other Copies I had 50 or 60 *l.* and I can make it appear I have spent all this and more in this Service, for I have none of the Money by me now.

Lord *Stafford*. This makes but 350 *l.* not one Tittle he swears is to be believ'd.

Otes. I can prove it now.

Managers. Be quiet, Mr. *Otes*, we will do you Right anon.

Then the Managers proceeded to call more Witnesses, in Order to fortify their own Evidence, and to falsify the Evidence given for the Prisoner; and first they endeavour to shew that *Dugdale* had frequently been in my Lord *Stafford's* Company, tho' his Lordship pretended he had little Knowledge of him.

William Hanson was sworn.

William Hanson depos'd, That about two Years since my Lord *Stafford* sent *Dugdale* for him, and that *Dugdale* brought the Deponent to my Lord *Stafford* into my Lord *Ashton's* Parlour, where my Lord *Stafford* treated with him about a Boy his Lordship was desirous to take into his Service; and that when the Deponent and the Boy went away they left *Dugdale* with his Lordship in the Parlour, and he did not remember any Body else was then in the Room, but the Deponent wou'd not be positive what Time of the Day or what Time of the Year this was.

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The Managers
call other Witnes-
ses to support the
Testimony of the
first.

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James

James Ansel was sworn.

He depos'd, That he saw *Dugdale* with a Gentleman they call'd my Lord *Stafford* in the Court at *Tixall*, but whether they had any Discourse together he cou'd not tell; and being ask'd whether *Dugdale* went away from my Lord *Aston's* for Debt, or on account of the Plot, he answer'd, he cou'd not tell; but about a Fortnight after the News of the Plot, he told *Dugdale*, he heard he was concern'd in the Plot, and *Dugdale* laugh'd at it, and said, God blast him if he knew any thing of it.

The next Thing the Managers endeavour'd to make out, was, that altho' Mr. *Phillips* and Mr. *Sambridge* both deny'd that *Dugdale* gave any Account of the Death of Sir *E. Godfrey*, the Monday after he was kill'd in their Presence, as *Dugdale* had depos'd at a former Tryal, yet that *Dugdale* did mention that Matter before them.

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The Managers
bring Witnesses
to prove that
Godfrey's Death
was talk'd of in
Staffordshire, be-
fore his Body was
found.

James Ansel then depos'd farther, That he was at one *Eld's*, an Ale-house in *Tixall*, on Monday Morning the 14th of *October*, and that *Dugdale* call'd him into the Parlour there, and told him of the Death of a Justice of Peace in *London*; that *Dugdale* came just then from Mr. *Sambridge* and Mr. *Phillips*, who were in the same House; and that the Deponent afterwards went into the Room where Mr. *Phillips* the Parson was, but he did not hear any Discourse of the Justice's Death there.

Hanson also was call'd again, and depos'd, That he was at Old *Eld's* House at *Tixall* on Monday Morning the 14th of *October*, being the Day he went to run the Race, and he heard *Dugdale* say, there was a Justice of Peace murder'd that liv'd at *Westminster*, and that Mr. *Phillips* and Mr. *Sambridge* were in the Room, but he cou'd not swear they heard it, having had no Discourse with them about it.

Then the Managers proceeded to shew that this was reported in the Neighbourhood of *Tixall* before Sir *E. Godfrey's* Body was found, and they did this on two Accounts, first, to fortify what *Dugdale* had said, and 2dly, to shew that Sir *E.*

Godfrey

Godfrey was dispatch'd by the Papists, the Prisoner's Confederates, or they cou'd not have known of it there so soon.

Edward Birch, Esq; was sworn.

He depos'd, That on the *Tuesday* and *Wednesday* after Sir *E. Godfrey* was kill'd, and before his Body was found, it was commonly reported in *Staffordshire*, that a Justice of Peace, of *Middlesex*, was kill'd, and 'twas thought by the Papists; but being ask'd, by the Lord High Steward, of whom he heard it, he answer'd, he cou'd not name any one in particular, but several People, who came to his House about Business, ask'd him if he had heard of it.

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John Turton, Esq; was sworn.

He depos'd, That there were two Races near *Litchfield*, one on *Tuesday* the 15th, and the other on *Friday* the 18th of *October*; that the Deponent was at both of them, and either at one or t'other Mr. *Whitehall*, a Justice of Peace of *Staffordshire*, call'd the Deponent to him, and ask'd him if he knew Sir *E. Godfrey*, and had heard he was murder'd, and upon the Deponent's answering, no, Mr. *Whitehall* reply'd, it was a common Report amongst them, and that he heard he was an active Justice of Peace amongst the Papists, and added, we had need have a Care what we do, for we shall all be sacrific'd.

Then the Managers proceeded to shew the Character of *Robinson*, one of the Lord *Stafford's* Witnesses, To which Purpose,

Mr. *Booth*, a Member of the House of Commons, was sworn.

The Managers discredit my Lord *Stafford's* Witnesses.

He depos'd, That he met *Robinson* at Dinner at a Neighbour's House in *Cheshire* on a Sunday, where he began a Discourse to ridicule the Lord's Day, and shew'd his Contempt of God and every Thing that was sacred; and his whole Discourse was very profane; that after Dinner *Robinson* wou'd have got the Company to play, and pull'd out a Parcel of Dice, which some of the Company said, were false Dice; and the Deponent shewing some Dislike at his Behaviour, *Robinson* was commanded to desist: That this was

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all the Deponent could say against him of his own Knowledge, but that a Day or two after he went to a Town where there had been a Cock-Match, and several People came to him and complain'd of *Robinson's* Cheats to a very great Degree, and ask'd him, what they shou'd do; that the Deponent reply'd, he was turn'd out of the Commission of the Peace, or he knew enough himself to bind him to his good Behaviour. That in *Lancashire* there were loud Complaints against this *Robinson*, and that he had chang'd his Name, and was reckon'd a notorious Cheat.

Lord *Stafford*. I never heard his Character before, or I would not have brought him here.

L. H. S. But this is the Man that gives the most important Evidence for you, (*viz.*) That *Dugdale* corrupted him to swear against you for Money.

Lord *Stafford*. If *Dugdale* knew him to be a cheating Fellow, he might think him the likelier to take Money to forswear himself.

Then the Earl of *Macclesfield* was sworn.

He depos'd, That he apprehended *Robinson* when he run away from my Lord *Gerard*, having cheated many of his Servants; that the Deponent did not commit him because he was somewhat interested in the Matter, but waiting till another Justice of Peace came, *Robinson* said to the Deponent, 'My Lord, have you a Mind to have your Son-in-Law bubbled? I have been only teaching him how to avoid being cheated; I acknowledge my self a Cheat and wou'd teach him to avoid them: That when the Justice of Peace came, they search'd *Robinson's* Pockets, and found false Dice; and that in all the three Counties of *Staffordshire*, *Cheshire*, and *Lancashire*, several People in Court knew this had been his common Practice.

The Lady *Gerard* was call'd also to *Robinson's* Credit, but she was not examin'd; and *Scampson Rawlings* was sworn, in Order to discredit *Holt*, another of the Prisoner's Witnesses.

Rawlings depos'd, That *Holt* was a Smith, and liv'd at my Lord *Assen's* Gate, and that he was counted a drunken lewd Fellow, and 'twas said, he

he kept another Man's Wife; that he broke open my Lord *Aston's* Wine Cellar, and stole several Bottles of Wine, and my Lord had sent him to Jail if *Dugdale* had not begg'd for him: That the Deponent came up to my Lord *Aston's* Tryal, and when he went down again *Holt* wou'd have murder'd him, because he had given Evidence for the King, and took Mr. *Dugdale's* Part, and said, he was a very honest Man: That the Deponent was a Taylor, and used to work for the Family at *Tixall*, and that *Dugdale* always paid him very honestly.

Thomas Thorne was sworn in Order to discredit *John Morral*, another of the Prisoner's Witnesses.

Thorne depos'd, That *Morral* was a Barber, and used to come often to my Lord *Aston's* to shave him, that he was poor, and the Deponent had contributed to keep him out of Prison, and that his Reputation was indifferent.

Simon Wright was sworn.

He depos'd, That *Plessington*, Steward to my Lord *Bellasis*, being in Custody about the Murder of Sir *E. Godfrey*, sent the Deponent, one Sunday, to the Marquess of *Winchester's*, to desire him to procure his Discharge, and that the Tuesday after *Plessington* was discharg'd; that thereupon the Deponent and *Plessington* became intimate Friends, and the Deponent used to shave *Plessington* and *Dugdale*; and that the Deponent being very intimate also with *Dugdale*, *Plessington* told the Deponent, that if he cou'd find a Way to take off *Dugdale's* Evidence, or destroy him, he shou'd have 700*l.* and Mr. *Reeves*, an Apothecary in *Chancery-Lane*, offer'd the Deponent his Note as a Security for the Money, as did Mr. *Dewy*, the Scrivener, also; and they wou'd have had him sworn that *Dugdale* wou'd have hir'd him to swear against *Taiborough* and *Price*, and wou'd have had the Deponent retract'd the Evidence he gave in that Tryal of *Taiborough* and *Price*: And since that Tryal they perswaded him to write a Paper to blast *Dugdale's* Reputation and shake his Credit, and they carry'd it to Mr. *Drayton* and Sir *James Simmons*, and that they fram'd another Letter

Letter for him to write to those Gentlemen; and Mr. Longmore told him that Sir James Symons was better able to perform than Dugdale was to promise, and if he would stand by that he should be a happy Man.

L. H. S. What had you said in that Paper?

Wright. I said as they directed me; That Mr. Dugdale would have given me Money to swear against Sir James Symons and Mr. Gerard, and I was to have sworn it but did not: My Poverty compell'd me, indeed, to accept 4*l.* of their Money, and my Lord Bellasis's Steward came and spent twenty Shilling on me; but they finding me not like to go thro, and distrusting me, I went into the Country, where I have staid ever since July last, till I was fetch'd up by a Messenger to give Evidence for the King: I receiv'd a Letter from my Lord Stafford's Agent at the same Time, to come to Stafford, and go up as a Witness for my Lord, with his other Witnesses, wherein the Agent promis'd me Money to bear my Charges.

Which Money was produc'd in Court.

Lord Stafford. I desire Time may be allow'd me, to prove something against this Man, till to Morrow.

Mr. Serj. Maynard. You will find another Witness by that Time. I desire my Lord would name his Witness.

Lord Stafford. No, I will not find one, I have him already; his Name is Dodd.

Then the Managers proceeded to obviate that Objection, That Dugdale did not produce any of the Papers and Letters he mention'd to have receiv'd, by shewing that he had burnt them when he was apprehensive of its being discover'd that he was concern'd in the Plot.

Elizabeth Eld was sworn.

She depos'd, That when Dugdale went from Tixall he took several Parcels of Papers out of his Pockers and Breeches, and said the Times were troublesome, and if he should be sick upon the Road he would not have his Papers seen, and therefore he desir'd her to burn them, and that she burnt all but one Book; and her Sister asking

asking if that shou'd be burnt, he said, No, there was no Treason in that; and the Deponent asking if there was any Treason in the others, he said, Do you think there was? And she depos'd farther, that she heard *Dugdale* say, before he went away, as he was about to drink a Glas of Cyder, that he wish'd it might be his Damnation, and that he might sink in the Place were he stood, if he knew any thing of the Plot.

Sir W. Jones. Pray, what Religion are you of?

E. Eld. A Roman Catholick.

Anne Eld was sworn.

She depos'd, That *Dugdale* came to her Father's House over Night, and that he burnt his Papers the next Morning, and had that Discourse with her Sister and her self, concerning them, as her Sister had testify'd.

The Managers went on, and said, in Answer to that other Objection, that *Dugdale* was necessitous and in Debt to my Lord *Aston* and others, and therefore not a fit Person to make an Evidence of, they shou'd shew, that he had been always ready to accompt with my Lord, and that he had Reason to think his Lordship was in his Debt. To which

Michael Noble was call'd and sworn.

He depos'd, That since the Discovery of the Plot, *Dugdale* desir'd him to assist him in making up his Accompts with my Lord *Aston*, and that they were twice at the Tower, and with great Difficulty they had Access to my Lord *Aston* once, and that his Lordship had three Books of Accompts, two he wou'd let them see, but the third, wherein were all the Discharges (as Mr. *Dugdale* said) he wou'd not let them see.

Stephen Colledge was sworn.

He depos'd, That he went with *Dugdale*, Mr. *Noble*, of the Temple, and one *Boson*, to the Tower, in Order to get my Lord *Aston* to state his Accompts with *Dugdale*; that Captain *Hawley*, of the Tower, went up to my Lord *Aston* to acquaint him they were there, but he brought Answer, his Lordship was not at Leisure to speak with them, and that the Lords were just going to Nine-Pins:

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The Managers call Witnesses to shew that *Dugdale* was not in Debt to my Lord *Aston*.

Whereupon *Dugdale* said he was very ill used, having been several Times there and cou'd not be admitted to speak with his Lordship, and added, that my Lord had a little Book, wherein there was an Accompt made up of 2 or 300 l. under his own Hand, which if his Lordship wou'd produce, The Accompt it self not be a quarter of an Hour in making up. That Captain *Hawley* brought back Word again; that my Lord did acknowledge he had that Book, and it was ready to be produc'd, but he must wait till his Council came out of the Country, and till he cou'd speak with the Lieutenant, for he wou'd not speak with Mr. *Dugdale* unless the Lieutenant were by, and in three or four Days he wou'd send for him. He depos'd farther, that a Servant of my Lord *Aston's*, hearing *Dugdale* was there, came into Captain *Hawley's* Chamber to see him, and paid *Dugdale* great Respect, and wou'd stand bare to him; and some of the Company ask'd this Servant, if *Dugdale* was accounted such a Knave when he liv'd with my Lord as they wou'd make him since, and the Servant answer'd, no; Mr. *Dugdale* was as honest a Gentleman as ever liv'd in their Family.

One indicted for
the same Treason
not admitted a
Witness.
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My Lord *Stafford* then desir'd that my Lord *Aston* might come and give an Account of this Matter, but was told, my Lord *Aston* stood indicted for the same Crime, and therefore cou'd not be a Witness.

Boson was sworn.

He depos'd, That in *January* last, *Dugdale* telling him he had an Order of Council to pass his Accompts with my Lord *Aston*, he went with Mr. *Dugdale*, Mr. *Noble*, and *Colledge*, to the Tower; and that Captain *Hawley* brought that Answer from my Lord *Aston* mention'd in *Colledge's* Deposition, whereupon *Dugdale* said, It was very hard, for that my Lord was almost 200 l. in his Debt.

Witnesses call'd
to support *Dugdale's*
Credits.

Thomas Whistly, Esq; was sworn.

He depos'd, That he had known *Dugdale* to be Steward to my Lord *Aston* nine or ten Years, that he receiv'd my Lord's Debts and Rents for him,

him, and exchange'd Lands for my Lord in forty Places, some the Deponent exchange'd with *Dugdale* himself, and that *Dugdale* stood very hard for his Lord's Interest: That *Dugdale* was the Person, next my Lord, in the Family, and govern'd the other Servants; that he never heard but he was an honest Man, only some Tradesmen complain'd he put them off without Money, and would not pay them what my Lord ow'd them.

William Southall, Coroner of *Staffordshire*, was sworn.

He depos'd, That *Dugdale* was Bailiff to my Lord *Aston*, and a kind of Governour in the Family; that he bought in Provisions, paid Workmen, and transacted most of the Affairs of that Family: That the Deponent had known him eight Years, and he was always of good Repute till now, among my Lord's Tenants and Workmen, and those who had a Dependance on the Family, and the Deponent never heard any ill Report of him till this Business happen'd.

Southall depos'd farther, That he was the Person who perswaded *Dugdale* to make a Discovery of the Plot, while *Dugdale* was in the Serjeant's Hands at *Stafford*; that, to induce *Dugdale* to it, he told him, not only his natural Allegiance but the Oath of Allegiance he had also taken, requir'd it of him; that his Majesty's Proclamation did not only promise him Pardon, but a Reward of 200 l. if he did it within the Time limited, which was within two Days of expiring; and that at length he consented to make a Discovery, and the Deponent brought the Mayor of *Stafford* to the Serjeant's House to take his Examination, and that he was farther examin'd before Mr. *Vernon* and Mr. *Law*; that the Deponent took Notes of these Examinations, [which were read in Court] and they were agreeable to the Examinations that had been before attested in Court.

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Thomas Adair was sworn, to shew that *Turberville* convers'd with the Lord *Stafford* at *Paris*.

Witnesses call'd
to support *Turberville's*
Credis.

He depos'd, That he was Page to my Lord *Pemis* when *Turberville* was Gentleman-Usher to one of

my Lord *Powis's* Daughters; that about five Years since the Deponent was with Mr. *Turberville* at *Paris*, in the Company of his Brother who was a Monk, and that *Turberville* told him, his Brother, the Monk, had introduc'd him into the Favour of a Lord, (as the Deponent remember'd 'twas my Lord *Safford*) and that there was a Yacht to come to *Diep* for my Lord, and they might have their Passage to *England* with him; that thereupon the Deponent and *Turberville* went to *Diep*, but no Yacht came, and after they had waited a Fortnight, *Turberville* told the Deponent, they might go to *Calais*, and go over with my Lord from thence; but finding an Opportunity of coming over in a little Vessel from *Diep*, the Deponent and *Turberville*, at last, took Shipping there. — He said farther, that he once walk'd about *Luxemburgh House* till *Turberville* went to wait on a Lord who lodg'd thereabouts.

Mr. *Powel* was sworn.

He depos'd, That *Turberville* told him, about a Year since, that he had much to say in Relation to the Plot, but said, he was afraid of disobliging his Brother, and that he found some of the Witnesses were discourag'd, and was afraid he should be so too, which were the Reasons he did not reveal it.

Then the Managers call'd some Witnesses as to *Turberville's* Character, and Mr. *Arnold*, a Member of the House of Commons, was sworn.

He depos'd, That he had known *Turberville* these two Years; that soon after the Discovery of the Plot *Turberville* was sent down by the Lords Committees to search for Priests, and was recommended, by my Lord Duke of *Buckingham*, and to the Deponent, to assist him in it; that he had been in the Deponent's Family some Time, and behav'd himself very well there, and in several other Families of his Relations; that the Deponent never heard a better Character of any Man from all Sorts of People. — That the Deponent found, by him, he had some Knowledge of the Plot, but when he had press'd him to discover it, he answer'd, The Witnesses were discourag'd and

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in Danger of their Lives, and that as long as the Duke of *Tork* had that Power in the Council, and the Lady *Powis's* Brother that Power over the Countries where he liv'd, he durst not do it for his Life.

Mr. *Hobby* was sworn.

He depos'd, That *Turberville* liv'd with his Brother above a Year, being cast off by his Relations because he wou'd not take Orders in the Church of *Rome*, (as his Brother told him,) that he was recommended, by his Brother, to his Father, where he liv'd half a Year; that the Depo-
nent had kept him Company since in *London*, and he never heard but that he behav'd himself as a worthy honest Gentleman.

Mr. *Matibens*, a Divine, was sworn.

He depos'd, That Mr. *Turberville* liv'd in his Neighbourhood sometime, when he was a Roman Catholick, and that he was a Person of a very fair Reputation, and he found him inclineable to come over to the Church of *England*.

William Seys was sworn.

He depos'd, That he had known *Turberville* two or three Years, and he behav'd himself like a very honest civil Gentleman.

Captain *Scudamore* was sworn.

He depos'd, That *Turberville* had been much at his House the last three quarters of a Year, and he did not see but he was a very honest Gentleman.

The Earl of *Stafford* and the Lord *Lovelace* were sworn.

They depos'd, That they had seen my Lord *Stafford* come lame into the House of Lords several Times within these seven Years: [*Turberville* having depos'd, That his Lordship was lame at *Paris* when he was with him, and my Lord having deny'd he had been lame these forty Years, these noble Lords, *Stafford* and *Lovelace*, were sworn to support the Credit of that Witness.] My Lord *Stafford* acknowledg'd he had been lame thro' Age and Weariness, but still persisted that he had not been lame of the Gout these seven
U 3 Years,

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The Lords *Stafford* and *Lovelace* sworn for the King.

Years, and particularly that he was not lame at Paris, as the Witness had depos'd.

Thomas Lander, coming into Court, was sworn as to *Holt's* Character.

Lander depos'd, That *Holt* was a Smith, and a drunken sottish Fellow; He depos'd farther, that he [*Lander*] came up to my Lord *Aston's* intended Tryal with his other Witnesses, and he was offer'd a Horse and Money in his Pocket if he would take off *James Ansel* and *Dugdale's* Evidence; and that Mr. *Thomas Aston*, and Mr. *Francis Aston*, and others, were in a Room together at *Tixall* when this Offer was made him.

L. H. S. Did they all make you this Promise?

Lander. Yes, my Lord.

Lord *Stafford*. I desire to ask Mr. *Whitby* if he did not tell the present Lord *Aston's* Father that *Dugdale* was a Knave, and desir'd him to turn him away.

Whitby. My Lord telling me that *Dugdale* said I destroy'd his Water, I answer'd, that I never endeavour'd it, and his Lordship said he believ'd me: Then I told my Lord that *Dugdale* was a Dishonour to his Family, and kept People out of their Money that was due to them, and that it occasion'd Complaints; my Lord bid me bring those People that had waited for their Money when his Son came into the Country, and I should hear what *Dugdale* would say to it; but my Lord's Gentleman told me afterwards, 'twould be to no Purpose, for my Lord would hear nothing against *Dugdale*.

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Then my Lord *Stafford* produc'd a Letter of *Simon Wright's*, wherein he tells Sir *James Symons* that *Dugdale* promis'd he would protect him as one of the King's Evidence, and he should not want Money if he would swear against Sir *James* and Mr. *Berard*.

Wright own'd that it was his Hand, but said, he was perswaded to set his Hand to it, and that Mr. *Fermin Drayton* and Mr. *Longmore* would have had him made Oath of it before a Justice of Peace, and that, by the Perswasions of *Dray-*

ton,

son, who was Mr. Heveningham's Butler, he wrote another Letter, which had a great deal more in it.

Sir William Jones. I desire to know if he was ever with Sir James Symons himself?

Wright. I din'd with him at the King's-Bench; and after I had written the Paper that was read, he gave me 20 Shillings; and said, he hoped I wou'd not go off from what I had said.

Lord Stafford. You see what is under his Hand, I have no more to say to him.

Sir Francis Winnington. I wish his Lordship wou'd produce that other Paper which Wright says is of more Consequence.

Lord Stafford. I did not know of this till just now, when it was deliver'd into my Hands.

His Lordship desiring till the next Day to bring in some Witnesses to answer some of the Proofs that had been made, and to sum up and make his Observations on the Evidence: It was granted, and the Lords adjourn'd to their House above.

Saturday December 4, 1680.

The Court being set, my Lord Stafford desired he might examine some Witnesses that he had not nam'd the Day before, to discredit some of those Witnesses who had been brought to discredit him, and to discredit some Witnesses that had sworn directly against him.

The Lord Stafford desires he may examine Witnesses to discredit those who had been produc'd to discredit him.

This the Managers oppos'd; for that his Lordship had bound himself up not to call any others than those he had nam'd the Day before; and because, if it were permitted that he shou'd examine to the Credit of those Witnesses who had been brought to discredit him, then the Commons might have Occasion to examine other Witnesses to credit those, and so the Proceedings wou'd be endless.

My Lord Stafford said, If he had been concern'd alone in the Event of this Matter, he shou'd not have mov'd it: That his Wife had press'd him to propose it, since their Lordships came in; and tho' he thank'd God he cou'd himself look Death in the Face without Fear, yet, when he consider'd

in what Condition he shou'd leave his Wife and Family in, it mov'd him.

Here he wept.

He went on, and said, He was not concern'd for himself, for he knew that he was innocent; but he cou'd not forbear shewing his Grief, when he consider'd his Wife and Children. The Lord High Steward desir'd the Managers to consider if it might not save Time to let his Lordship examine his Witnesses; for tho' in the Civil Law and in the Court of Chancery, they do examine to the Credit of Witnesses, and their Credit; but no farther; yet he cou'd not tell what their Lordships wou'd do in this Case, till they were withdrawn. The Managers hereupon consented, that his Lordship shou'd examine his Witnesses, provided he wou'd name them; and that if any Evidence shou'd be given that might require an Answer, they may not be foreclos'd from advising with one another about it.

Then my Lord *Stafford* nam'd my Lord *Ferrers*, Dr. *Taylor*, Dr. *Watson*, Dr. *Elliot*, and one *William Dale*, and said, in a quarter of an Hour, he wou'd name the rest. And first his Lordship desir'd my Lord *Ferrers* wou'd speak his Knowledge of *Southall* the Coroner.

The Lord *Ferrers* flood up in his Place.

He declar'd, That he had no Acquaintance with *Southall*; but 'twas reported in that Country, [*Staffordshire*] that he was a very active Man in the late Times against the King, and was look'd upon as disaffected to this Government.

Lord *Stafford*. As for this *Southall*, I never heard of him before; but for *Feak*, the Mayor, who assisted him in taking the Examination of *Dugdale*, and who drew up the Affidavit, I can prove he is an Attorney, and that he was Mayor of *Stafford*, and proclaim'd the King a Traitor.

William Dale was call'd.

L. H. S. Did *Dugdale* ever hire you to swear against my Lord *Aston*? Or do you know of his hiring any Body else to swear falsely?

Dale. I do not, my Lords.

Mr. Lieutenant of the Tower was call'd.

He

He depos'd, That *Dugdale* was at the *Tower* last Summer was Twelve-Months, and my Lord *Aston* wou'd not speak with him, unless the Deponent was by: That they came to the Deponent's Chamber, and shew'd him the Books of Accompts, which he said he did not understand himself; but if they insisted on his being by, he wou'd get some Body to be present that did, and have them adjusted; and Mr. *Dugdale* said, He wou'd come another Time, but from that Time to this he had never heard of him.

Then the Lord *Stafford* proceeded to sum up and make his Observations on the Evidence: Shewing, in the first Place, that the Defects of his Memory, old Age, his Unskilfulness in the Laws, and Want of Sleep, render'd him incapable of doing it in such a Manner as the Importance of the Thing requir'd; but as their Lordships, who were his Judges, were also, by Law, to be of Council for him, he said, he hoped they wou'd supply every Thing wherein he might be wanting to himself.

The Lord *Stafford* makes his Observations on the Evidence.

He observ'd, That *Dugdale*, the first Witness, had at one Examination depos'd, That his Lordship was at *Tixall* at *August*, which appear'd to be false; and he thought a Man who wou'd swear false in one Thing, was not to be credited in any: That his Lordship's Witnesses had disprov'd him in several other Parts of his Testimony, and shewn, that he had endeavour'd to suborn People to swear against his Lordship.

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That as to *Otes*, he depos'd no more formerly than that he believ'd his Lordship to be in the Plot, but now he swore it positively: And he appeal'd to their Lordships, If *Otes* did not depose in the Lords House, that he only saw his Lordship's Name to certain Letters, and that he knew no more; but afterwards, he swore, he saw a Commission deliver'd to his Lordship; so that his Lordship observ'd *Otes*'s Memory increas'd as he had Time to invent; and possibly at another Time, it might improve much more: That his swearing he had no more to say against any Body,
and

and afterwards accusing the Queen, and swearing his Lordship had a Commission, he thought was perfect Perjury: That he observ'd *Ores* was so far from expressing any Repentance or Concern for his Dissembling so notoriously with God and Man, that he did, the Day before, with a smiling Countenance, and, as it were, in Derision, own the monstrous Offence: That indeed many wicked Men had been admitted as Witnesses, but never did any wicked Man own a wicked Thing, which he might have conceal'd, and boasted of it, that ever was credited in any Thing.

As to *Turberville*, the next Witness, his Lordship thought it strange, that none of his Servants should see him at *Paris*, if he had convers'd with him a Fortnight together, especially since no Body had Access to him, but they were brought in by the Servants: That *Turberville's* swearing he came to my Lord *Pam's* in 72, and the next Day swearing it was 72; and that his Lordship came by *Calais*, when it appear'd he came by *Dier*, were Circumstances that ought to render *Turberville's* Evidence suspected: And he thought he was sufficiently contradicted in other Parts of his Testimony, as to his being ill used by my Lord *Pam* and his Brother at his Return from *Donay*: And that *Turberville's* Knowledge of the Plot was but very lately, it having been depos'd by two Witnesses, that a Year ago he swore he knew nothing of it.

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He observ'd farther, That not one of those Witnesses were Men of any Quality or Condition; and he thought they gave Evidence rather to get Money, than for the sake of Truth: And again, he desir'd their Lordships to consider *Ores's* dissembling with God Almighty, and his impudent owning it; and said, if he were a Judge, he would not hang a Dog upon such Evidence.

[Here my Lord *Lovelace* took Notice that Sir *Bernard Gascoigne* had got among the Lords, and said, It was the impudentest Thing that ever was done in a Court of Justice, that while they were trying a Person for a Popish Plot, a profess'd Pa-

pist

pist shou'd stand in the Body of their House. Whereupon Sir *Bernard* went out of Court.]

Then the Lord *Stafford* went on, and said, The whole Course of his Life cou'd give no Colour to this Charge; and challeng'd any one to say, he had been guilty of one disloyal Word or Act: That he attended his Majesty in the late Wars, till his Family was reduc'd to great Straits thereby; whereas, if he had come to *London*, and join'd that Party, he cou'd have sav'd his Estate, and liv'd quietly, as others did; and his Lordship added, that the Proof of a General Plot by the Papists did not affect him, if it had not been made out; for that the Managers had not yet prov'd that he was a Papist.

The Managers desir'd, before they answer'd what my Lord had said, to call a Witness or two to the Character of Mr. *Southall*, whom his Lordship had endeavour'd to discredit.

Then the Lord *Brook* was sworn.

He depos'd That *Southall* was employ'd by his Mother and Brother, and they took him to be an able Man, an honest Man, and a good Churchman; and that he receiv'd the Sacrament four Times a Year.

Mr. *William Levison-Gower*, a Member of the House of Commons, was sworn.

Mr. *Gower* depos'd, That being a Justice of Peace of *Staffordshire*, he observ'd, that *Southall* was a zealous Prosecutor of the Papists in that County: That he had apprehended several Popish Priests, and convicted one; and that *Southall* had often desir'd the Deponent's Assistance for prosecuting Papists the most effectual Way on the Penal Statutes: And he observ'd, That those who believ'd the Popish Plot, spoke well of *Southall*; and those who did not, spoke ill of him.

Then Sir *William Jones* summ'd up the Evidence, and made his Observations on it for the Commons: And having mention'd the Proofs that had been produc'd of the Plot in General, he said, He thought there were none now who wou'd pretend not to believe it, but those who were Conspirators in it, or those who wish'd for the Success of

Page 680.

A Member of the House of Commons swore as a Witness.

Sir William Jones sums up the Evidence for the Commons.

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of it: And insisted, that the Evidence of the Plot in General, wou'd go a great Way to make the Evidence against the Prisoner in particular highly credible: That there being Arms provided, and an Army to be rais'd, &c. shew'd, at least, that there was an Occasion for such an Officer as a particular Witness had sworn his Lordship was to be.

Page 622.

He observ'd, That tho' his Lordship objected that he had not been prov'd a Papist, yet it appear'd in Proof, that his Lordship went to Mass, and bewail'd that they had not the free Exercise of their Religion, which amounted to something more than Presumption: That altho' *Dugdale* was doubtful of the Time in one Particular, whether it were in *August* or *September*; yet, as to that Offer of my Lords, to give him 500*l.* to kill the King, which principally concern'd his Lordship to answer, he was positive as to the very Day his Lordship made him the Offer.

He observ'd, also, That in another Discourse between my Lord and *Dugdale*, his Lordship took Notice of the great Losses that himself and his Friends sustain'd in the King's Service, and resented, that the King shou'd bestow Places rather on those who had been Rebels and Traitors, than on such as had done him faithful Services; and had said, That next to the Cause of Religion, the King's Ingratitude was the greatest Motive to induce them to take away his Life.

He observ'd, That this Piece of Evidence agreed with that of *Dr. Otter's*, who had depos'd, That he heard his Lordship complain, *That the King had deceiv'd them a great while; and that they wou'd bear with him no longer; he shou'd deceive them no more.*

As to *Turberville*, the 3d Witness, he thought it very credible, that *Father Turberville*, and the other Fathers, who us'd to attend his Lordship at *Paris*, might give his Lordship that Confidence in him, as to propose the Murder of the King to him.

Then *Sir W. Jones* proceeded to answer the Objections that his Lordship had offer'd to the Testimony of these Witnesses: And first, as to what the Lady

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Marchioness of *Winclesfer* and Mrs. *Howard* had depos'd, That *Dugdale* had sworn at Sir *George Wakeman's* Tryal, that there was a Consult at *Tixall* in *August*, where my Lord *Stafford* was present: He observ'd, That these two Ladies differ'd as to one Part of their Testimony, one of them deposing, That *Dugdale* swore, that his Lordship was to come down in *June* or *July*; and the other, that *Dugdale* swore, he did actually come down then: And he thought those Ladies might have so much Concern upon them for Sir *George Wakeman*, the Popish Physician, and in him for other Friends of their Party, that they might not have so much Liberty of Thought as to observe exactly all Circumstances sworn by the Witnesses; and it was no Wonder if they were mistaken. As to the Evidence of his Lordship's Servants, *Furnese* and *Leigh*, he thought it impossible for them to be sure of a Negative; and besides, it was to be consider'd they were not only of his Lordship's Religion, but his Servants too; and therefore no great Weight was to be laid on what they said.

As to what *Sawyer* depos'd, That *Dugdale* said, *he wou'd be reveng'd of my Lord Aston*, when he was taken up, because he wou'd not own him for his Servant, he thought it did not at all concern this Case, for it cou'd not be intended that he design'd to be reveng'd on every Man of that Religion, or of every Man that came to my Lord *Aston's* House; and as to what *Sawyer* said of *Dugdale's* taking a Glass of Drink and denying his Knowledge of the Plot with Execrations, it was no Objection to his Testimony, for he was very far from revealing the Plot at that Time, being apprehensive his own Life wou'd be endanger'd by it, as might be observ'd from *Southall's* Evidence.

As to the Report of *Godfrey's* Death, by *Dugdale* at *Tixall*, the *Monday* after he was kill'd, he thought it very possible Mr. *Philips* might forget; and as for Mr. *Sambridge*, it was no Wonder he did not hear it, so deaf as he was: But they having prov'd by two other Witnesses, that *Dugdale* did report it on the *Monday*; and two Gentlemen of Quality having depos'd, That it was the common Talk in that

that Country a Day or two after; he thought *Dugdale's* Evidence of this Matter well supported.

As to *Dugdale's* denying before the Justices of Peace when he was apprehended, That he had any Knowledge of the Plot, that he thought was answer'd by *Somball's* Testimony.

As to *Robinson's* Testimony, that *Dugdale* endeavour'd to suborn him, It was highly improbable he thought, that *Dugdale* shou'd make such an Attempt on a Person he was not acquainted with, and especially when the Person whom it was said he wou'd have suborn'd, had no Knowledge of my Lord *Stafford*, whom he was to have sworn against; but however probable that Matter might be, the Character that had been given of *Robinson*, render'd his Evidence very much suspected.

As to *Murrel* and *Holt*, who had also depos'd, That *Dugdale* wou'd have suborn'd them, he said, they appear'd to be Men of indifferent Reputations, and therefore little Credit ought to be given to what they said.

As to what Mr. *Lyden* and *Gifford* depos'd, That *Dugdale* swore at the Trial of the Five Jesuits, of the Report of *Godfrey's* Death, he thought *Dugdale* was sufficiently supported in that Matter by other corroborating Evidence, notwithstanding their Testimony.

As to that Objection to *Dugdale's* Testimony, That he had said *Hobson* told him such a Matter just after the Almoner went away, when it appear'd *Hobson* went away with the Almoner, and so what *Dugdale* depos'd before the Justices, must be false, He desir'd to observe, that this Examination was put in Writing by an unskilful Country Clerk; and besides, that the Words wou'd bear another Sense, viz. That *Hobson* told him, (after he came back again) that there was a Design ever since the Almoner went away: That it was a doubtful Expression, and might refer either to the Time he told him of it, or to the Matter he told him of; and being taken in the latter Sense, the Objection fail'd.

As to that Objection against *Ones's* Testimony, That being ask'd in the House of Lords whether he

he had any more Persons of Quality to accuse? He said, No. Sir *William* observ'd, that this was after he had accus'd my Lord *Stafford*, and long after his Lordship was committed to the *Tower* upon *Otes's* Testimony. And as to *Otes's* accusing the Queen after he had sworn he had no more to accuse, he desir'd to observe, that *Otes's* Accusation of the Queen was not positive, or of his own certain Knowledge, but Words which he heard spoken in a Room in which he was not himself, tho' he came in afterwards and saw the Queen there; and it was a Question whether what he testify'd wou'd have amounted to a Proof by one Witness: And besides, it might not be clear to *Otes*, whether the Queen was a Person capable of an Accusation, so as to be proceeded criminally against: And farther, That *Otes* had then given an Account of a great many Persons, and his Narrative against them, and of the whole Plot, consisted of a great Number of Particulars; and the Question being ask'd him on the sudden, *Have you any more to say? Or can you speak against any other?* 'Twas very possible, a Man that had spoken so much, and of so many, might not upon an Instant recollect whether he had said all, or against all that he cou'd accuse; and Sir *William* thought it a very severe Constrution to hold him perjur'd, because he did not at that Instant remember that Particular of the Queen.

He answers that
Objection of
Otes's accusing
the Queen after
he had said he
had no more to
accuse.

Page 686.

As to that Objection, that *Otes* had chang'd his Religion more than once, he said, It was no more than what Men of great Learning and Fame in our Church had done before him: That *Chillingworth* was first a Protestant, then a Papist, and afterwards a Protestant again; so that unless his Lordship cou'd charge him with some great Immorality, this alone ought not to hurt his Testimony; and it was happy for the Nation he had thus chang'd, for otherwise they had not come to the Knowledge of the Plot: That he did admit *Otes* was subject to Passion; and it was generally observ'd, that passionate People were not Malicious: He wou'd allow also, that *Otes* was not a Man of the deepest Reach, but then it must be

be admitted, that one who was not of a deep Judgment cou'd never have invented a Narrative, consisting of so many Particulars, and they so coherent, (if they were false) but must be endu'd with more Subtilty and wicked Policy than upon Tryal they cou'd find him to be; and his Infirmities were rather a Confirmation than any Diminution of the Truth of what he said.

As to that Objection to *Turberville's* Testimony, that he alter'd his Affidavit from 72 to 73, &c. he observ'd, that it was done the next Morning, upon his own Motion, before any one question'd him for it; and this he thought shew'd his Care and Conscience too, when he was so careful in Matters of the smallest Moment; and that for a Man to mend his Answer in the Court of Chancery, in Point of Time, or other Circumstance, was no Disparagement to him, but rather a Reputation, if he did it before the other Party took Notice of it; and he did not think the worse of a Witness for not being positive after six or seven Years were elaps'd. That as to my Lord's Servant not seeing *Turberville* at *Paris* with his Lord, and *Turberville's* acknowledging he did not know the Boy, he thought there was no great Matter in it: He was introduc'd by his Brother and the other Priests, whom neither Master or Man deny'd a Correspondence with, and he might easily be brought in by them without the Servant's Notice, or *Turberville's* knowing of the Servant: The Priests, they were his Guides, and were likeliest to gain him Admittance, not only into my Lord's House, but into his Heart: And he observ'd, That *Turberville* appear'd to be very stout and very indigent, and therefore a very fit Instrument for the Priests, not unlikely to be recommended by them to my Lord for such a Purpose.

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That tho' Witnesses had been brought to shew that *Turberville* lay in the Lord *Powis's* House after he return'd from *Doway*, yet they might not be Witnesses of the Reproaches and unkind Usage he might receive from the Family in private; and for his Brother and Sister's Kindness to him on his Return, it amounted to no more than the raising

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sing him 7l. that they might never see him no more, which was not a very expensive Way of getting rid of a younger Brother who lay upon the Family.

As to Mr. *Lydcot*, who was call'd again, his Arithmetick appear'd so bad, and he so confounded Matters with his new (Romish) Stile, that it made it suspected, whether he was so good a Protestant as he pretended; and, 'till he produc'd the Book he promis'd, they had no Occasion to say any more to him.

As to what *John Porter* and Mr. *Talden* said: That *Turberville* deny'd his having any Knowledge of the Plot, and particularly as to his damning himself, because he cou'd make no Discovery, &c. he thought that this look'd like something prepar'd for the Purpose, it being improbable a Man shou'd use those horrid Oaths, who had such a Mind to be a Discoverer, and thereby disable himself ever to be so, by swearing he knew nothing: And to the Testimony of *Porter* and *Talden* he also oppos'd the Evidence of *Powel* and *Arnold*, to whom *Turberville* had discover'd some Knowledge of the Matter before the Time of the pretended Discourse with *Talden*.

As to that Mistake in *Turberville's* Affidavit, that my Lord came Home by the Way of *Calais*, *Turberville* cou'd not possibly be thought to speak his own Knowledge, because in the same Affidavit he says, he came away before my Lord: But he confess'd, if *Turberville* had understood how strict and nice a Man ought to be in expressing himself in an Affidavit, he wou'd have said, My Lord came by *Calais*, and that Count *Grammont* came with him, *as he had been told*, or, *as he understood*: But all they cou'd say against him in this Particular, he thought, was, That the Affidavit was not so cautiously worded as it shou'd have been, but that it did certainly disclose so much in itself, that he did not take upon him to swear his own Knowledge; so that it was rather want of Skill how to express himself properly, than any Corruption in his Oath, or a forswearing himself.

Page 638.

Nor was it so strange as my Lord wou'd make it, that *Turberville* shou'd have lost the Letter his Lordship sent him, that he wou'd go by *Calais*, considering *Turberville's* Circumstances, and how he had been toss'd about for or four five Years last past; and that *Mort* did not a little corroborate *Turberville's* Testimony, who being at *Diep* with *Turberville*, was told then by him, that his Lordship wou'd go by *Calais*, and that if he wou'd make Haste thither he might go over with him.

He added, That they had brought several Persons of Quality to testify the Reputation of both *Dugdale* and *Turberville*; and tho' it were admitted that *Dugdale* did not sometimes pay Tradesmen duly, that cou'd be no Impeachment of his Honesty; he believ'd there might be some Lords there whose Stewards were very honest Men, and yet the Tradesmen such Lords dealt with were not always readily paid.

That it appear'd by the Evidence of *Southall*, that *Dugdale* did at first discover much the same in Substance, against the Prisoner, as he did now: From whence he observ'd, That 'twas impossible it cou'd be a Contrivance among the Witnesses to depose the same Crimes against this Lord; for *Otes* did not know *Dugdale* till he was brought up, which was long after *Otes's* Accusation of this Lord.

Page 689.

And to what he had said before of my Lord's being prov'd a Papist, he added, That he understood his Lordship deserted the House of Peers, because he wou'd not take the Test appointed by the late Act: But if that shou'd be admitted for this Time, that his Lordship was a Protestant, he wou'd not deserve a whit more Favour from their Lordships.

And altho' my Lord wou'd have it look'd on as a Presumption of his Innocence, that he did not fly for it, when he had seven Posts Time to make his Escape: He said, it was true, he might have fled; and so might *Coleman*, who left so fatal an Evidence against himself and all his Party under his own Hand; and so might the Five Jesuits have escap'd too, but they hoped the Oath of Secrecy,

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and the other Means they had used to conceal their damnable Designs, wou'd have prevented the revealing them.

As to that Objection, That *Otes* did not produce one of those many Letters he mention'd to come from my Lord *Stafford*, he answer'd, Those Letters were not written to *Otes*, nor did they belong to him, nor was it possible that the Letter of my Lord's, which *Otes* deliver'd in at the Post-House, cou'd now be produc'd by him.

He observ'd farther, That his Lordship had had that Advantage towards making his Defence that never any Man had before him; for the Evidence had been printed and publish'd to the World before it was given in Court, which he thought very unfit to be done; Because the disclosing the Evidence beforehand was the Way to have it falsify'd and corrupted, and yet he appeal'd to their Lordships if their Evidence had receiv'd any considerable Contradiction.

He concluded, That the Evidence was so strong that he thought it admitted of no Doubt, and the Crimes so foul, that they needed no Aggravation; they were not only Offences against his Majesty, but against the Protestant Religion, for the Extirpation of all Protestants out of the three Kingdoms was intended; at least, all that dar'd to have continu'd so must either have left their Country or have been burnt in it. —

That it was a Design that appear'd with so dreadful a Countenance to their Lordships, and the whole Nation, that he need be at no Pains to make them apprehend it; and as the Matter was fully prov'd, he was sure their Lordships wou'd do that Justice to their King and Country, as to give Judgment against these Offenders, which wou'd not be only a Security to the Commons, but a Terror to all others against committing the like Offences.

The Lord *Stafford* desir'd to observe some Mistakes and Omissions of Sir *William's*: As first, that he omitted mentioning that Mr. *Turberville's* Brother depos'd, that he came to the Lord *Pomis* in 71. 2dly, That his Lordship appear'd to be

X 2

a Papist,

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The Prisoner takes Notice of some Mistakes in Sir W. Jones's Observations.

The Test, when
first impos'd.

a Papist, because he had not taken the Test; whereas the Test was requir'd but since he was in the Tower. 3dly, That he said he had the Letter in his Pocket, which he produc'd, whereas it was put into his Hand while it was at the Bar. 4thly, That *Hobson* did not go out of *England* with the Almoner. 5thly, That his Lordship said *Otes* was an infamous Person, because he went to an idolatrous Church; whereas his Lordship only said, it was adjudg'd to be idolatrous by Act of Parliament.

Mr. *Powel* answers
that Part of his
Lordship's De-
fence as to the
Improbability of
his being in the
Plot.

Then Mr. *Powel*, another of the Managers, undertook to answer the several Reasons from whence his Lordship wou'd infer a great Improbability that he shou'd be guilty of these Treasons: And first, as to these solemn and repeated Protestations that his Lordship made of his Innocence, he said, Whatever Regard their Lordships might have to the Protestations of a Peer in another Case, yet now their Lordships sate in the Seat of Justice they wou'd proceed according to the Evidence, *secundum allegata & probata*, and hoped their Proofs were so clear as to leave no Room to believe his Lordship's Protestations; As to that other Presumption of his Innocence, that he did not fly for it; that might proceed as well from a Confidence of the Strength of his Party, as from a Confidence of his Innocence; and whether the Power and Prevalence of the Popish Party, at that Time, might not reasonably create such a Confidence in this noble Lord, he left to their Lordships Judgment. — That they did conceive the Murderers of Sir *E. Godfrey* had such Confidence in the Favour and Protection of some of their Party, that they thought themselves able to out-face Justice, and they believ'd the Party intended it as an Example to deter all Men from so much as meddling to take an Examination concerning this horrid Plot.

And as his Lordship had observ'd, out of my Lord *Coke*, that a Judgment ought to be form'd, in these Cases, from the Nature and Circumstances of the Fact, with Reference to the Person accus'd, whether they were likely to induce or deter

deter him from such an Attempt; and his Lordship had rais'd some Arguments from the whole Tenour of his Life, and had taken Occasion to mention his own and his Ancestors Services to their King and Country: He desir'd their Lordships, in Answer to this, to consider, that however his Lordship was pleas'd to disown his being a Roman Catholick at present, he thought that had been sufficiently prov'd in the Course of their Evidence: And as a misguided Conscience cou'd engage the best Men in the worst Actions, so he thought the Principles of that Religion were such, as were more likely to pervert Men from their Duty and Allegiance than any other Religion or Perswasion whatsoever.

The last Thing he took Notice of, was his Lordship's affirming the Doctrine of Killing and Deposing Princes to be a private Opinion, whereas the most celebrated Writers of the Church of *Rome* had publickly avow'd and maintain'd that Doctrine, and that the Pope and the Church of *Rome* never fail'd to avow those Actions when they were done; he acknowledg'd that many private Writers did hold the contrary Opinion, but he look'd upon it as a Piece of Policy and Artifice in that Church to leave this Point in some measure undetermin'd, that so they might make Use of it as Occasion serv'd; for if it succeeded, then it was own'd and justify'd; but if it miscarri'd, then the Doctrine was said to be but a private Opinion, and the Plot but the Practice of particular Persons that were either desperate or discontented: And he desir'd that their Lordships wou'd take the whole into their Consideration, and do thereupon what shou'd be agreeable to Justice.

Then the Managers proceeded to answer such Objections as his Lordship had made in Point of Law.

1st Objection. That there was no Example or Precedent that Proceedings criminal ever continu'd from Parliament to Parliament, and this had continu'd there.

X 3

2d, That

Page 691.

Page 679,
Page 691.
His Lordship's
Exceptions in
Point of Law.

2d, That no Man ought to be proceeded against capitally, but upon an Indictment found by a Grand Jury.

3d, That there was no Overt Act laid in this Impeachment.

4th, That they were not competent Witnesses who were produc'd against him, because they swore for Money.

5th, That there were not two Witnesses to any one Point.

The Managers
answer them,

Mr. Serj. *Magnard* said, As to the first Objection, he did acknowledge this Charge was presented in another Parliament, but he held that what was once upon Record in Parliament, might at any Time after be proceeded upon: And that in a Case of this Nature, where the Life of the King, their own Lives, and their Religion, were at Stake, if there was no Precedent he hoped they would make a Precedent.

As to the 2d, he said, In Impeachments of the Commons there was no Necessity of an Indictment.

That he wonder'd at the 3d Objection, it being charg'd and prov'd that he had receiv'd a Commission, been at several Consults, and hired Persons to kill the King, which were sufficient Overt Acts.

Page 632.

Sir *William Jones* added, As to the first Objection, that it was true that there was a general Impeachment of the Prisoner in the long Parliament, and another particular Impeachment in the last Parliament, to which the Prisoner had pleaded; and that this was now the Third Parliament in which he was brought to his Tryal; But that it had been resolv'd by their Lordships, and sent down to the Commons, and it was enter'd in their Books as the Law and Constitution of Parliaments, *That not only Impeachments, but all judicial Proceedings, continue from Parliament to Parliament in the same State that they were in at the rising of the last Parliament.*

Impeachments,
and all judicial
Proceedings, re-
main in the same
State they were,
notwithstanding
the Dissolution of
the Parliament.

As to there being but one Witness to one Overt Act, it had been resolv'd in the Case of Sir *Henry Vane* and others, that tho' there must be

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be two Witnesses to prove the Treason, yet there needed no more than one to one Act, and another to another, if the several Acts fell under the same Head of Treason, and they were not Treasons of a different Species.

Sir Francis Winnington added, As to the first Objection, That one Reason why an Impeachment was not discontinu'd by a Dissolution of the Parliament was, because it was the Cause of the Commons of England, who only charg'd their Representatives in a new Parliament.

As to the 2d Objection, That this Prosecution ought to have been upon an Indictment, he said, The House of Commons were the Grand Inquest of the Nation, and it were strange if an Accusation by them should not be as effectual as the finding of a particular Jury: That, indeed, when a Peer came to be try'd by Commission, or in Parliament, when it was not at the Prosecution of the Commons, there an Indictment is first to be found in the proper County, (where the Fact was) and brought up before the Peers by *Certiorari*, and upon that they proceed; but whether the Party be Peer or Commoner, if he be impeach'd, by the constant Usage of Parliaments, the Lords proceed to Tryal, and give Judgment thereupon without an Indictment found.

An Indictment not necessary where there is an Impeachment.

As to the 3d Objection, he held, That Words themselves, if they signify an Intention to commit a treasonable Act against the Prince's Life, are a sufficient Overt Act, and a legal Evidence of Treason.

Page 693.
Words an Overt Act where they discover a Design against the Prince's Life.

As to the 4th Objection, That they were incompetent Witnesses because they had taken Money to swear, that was purely a Matter of Fact, which his Lordship ought to prove, and then they would give him an Answer.

L. H. S. If it were only Money to maintain them, that will not be an Objection.

Lord Stafford. I submit to your Lordships, whether *Otes* and the rest have not had great Sums of Money, besides 10 l. a Week for their Charges; And I desire my Council may be heard as to the Objections I have made.

The Allowance made *Otes* by the Government.

Where a Prisoner desires Counsel, as to Matter of Law, the Thing must be a Doubt to the Court as well as himself.

Every one may maintain his Witnesses. Query, If those large Allowances made Ores, Bedles, &c. were not found Objections to their Testimony.

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Counsel may not argue as to the Law and Course of Parliaments.

Sir William Jones. If a Prisoner desire Counsel in a capital Case, he must not only alledge Matter of Law to introduce that Request, but he must alledge such Matter as the Court is in Doubt of; now if your Lordships are not satisfy'd that it is the Law of your House, that Proceedings upon Impeachments do continue from Parliament to Parliament, we cannot answer that; it lies in your Lordships Breasts, we may not argue that, because it concerns the Law and Rules of Parliament.

As to that Objection, that his Majesty allow'd a Maintenance to his Witnesses, there was nothing in it; for that every Man allow'd his Witnesses a Maintenance, tho', perhaps, every one did not give so large an Allowance as the King, his Dignity not being so great. And if his Majesty had been bountiful to his Witnesses, what is that to the Cause of the Commons who are Prosecutors; he can shew no Bribery in them, as had been prov'd against himself.

L. H. S. What Hurt can there be in hearing my Lord's Council.

Sir Fr. Winnington. In the House of Commons we never suffer Counsel to tell us the Course of our House, or the Law of Parliament; if your Lordships think fit to allow it, 'tis in your own Power; but we who are intrusted by the Commons have no Direction to consent to such a Thing.

L. H. S. We will hear Council to that Point, whether every Overt Act ought to be prov'd by two Witnesses.

[Then Mr. Wallop and Mr. Saunders, of the Middle-Temple, and Mr. Hunt, of Gray's-Inn, appear'd, being assign'd of Counsel for the Prisoner.]

Mr. Wallop desir'd they might have Time to prepare an Argument, for that they were not ready to speak to it at present.

Whereupon the Lords adjourn'd to their House above, and in about an Hours Time return'd.

The Lord High Steward then acquainted the Prisoner that their Lordships had resolv'd, that the Judges shou'd deliver their Opinions as to that

Page 695.

that Point concerning the Necessity of two Witnesses to every Overt Act.

The Judges having consulted together, my Lord Chief Justice *North* deliver'd his Opinion first, (the Lord Chief Justice *Scroggs* being absent) viz. That if there be several Overt Acts, or Facts, which are Evidences of the same Treason, and if there be one Witness to prove one such Overt Act at one Time, and another Witness to prove another Overt Act at another Time, both the Acts being Evidences of the same Treason, these were two sufficient Witnesses of that Treason, and wou'd maintain an Indictment or an Impeachment of Treason; that he never knew any Doubt made of it in any inferiour Court of Justice.

The Judges deliver their Opinions, that two Witnesses to every Overt Act are not necessary, but one to one Overt Act, and another to another is sufficient.

Of which Opinion were all the rest of the Judges present. And Mr. Baron *Atkins* added, that this Question was started in the Case of Sir *Henry Vane* and others, and was not thought worthy of Debate; and if the Law shou'd be held otherwise, it wou'd affect those Judgments which had been given on this kind of Proof, and the Consequence must be, that those Persons, who were executed on those Judgments, suffer'd illegally; and therefore he was of Opinion, that it was not requisite there shou'd be two Witnesses to every Overt Act.

My Lord *Stafford* said, he hoped the Reason given by Mr. Baron *Atkins* for his Opinion, (viz.) That if it were not so, a great many Persons must be acknowledg'd to have suffer'd unjustly, wou'd not weigh with their Lordships or any Body else.

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The Lord High Steward answer'd, That was but one Reason amongst many; but the true Reason was, that if the Law were otherwise, there wou'd be great Safety in conspiring the Death of the King.

Then the Lords adjourn'd to their House above, and sent a Message to the Commons, (who were likewise withdrawn to their House) that they wou'd proceed in the Tryal on Monday next.

The Lords adjourn.

Monday

6th Day.

The Lord Stafford petitions the Lords to be heard again.

Monday the 6th of December, 1680.

The Court being set, the Lord High Steward order'd a Petition, which the Lord Stafford had sent to the House of Lords, to be read; importing, that his Lordship had something farther to offer, which he hoped would clear him.

The Petition being read, the Lord High Steward acquainted the Prisoner, that upon this Petition their Lordships were come in Order to hear what he had to offer.

The Lord Stafford having return'd their Lordships his Thanks for this Favour, said, He observ'd, that by their Lordships Order, his Counsel were not to be heard touching the Continuance of Impeachments from Parliament to Parliament, but he hoped he might, without Offence, offer his own Conceptions about it, and conceiv'd, in that Order, their Lordships did not say they did or did not continue; that had their Lordships given any Judgment in it, he should have acquiesc'd, but he hop'd their Lordships would be of Opinion that this did not continue, for that one of the Managers had said, *If there were no Precedents their Lordships would make a Precedent*; from whence he inferr'd, there was no Precedent yet, 2dly, For that he never read of any that were prosecuted by Impeachment without an Indictment, and he hop'd their Lordships would keep to that great Maxim of their Noble Ancestors, *Nolumus leges Angliæ mutare*, and whether this were not a Change of the Law, he submitted to their Lordships. 3dly, He thought Words could not amount to an Overt Act, and tho' their Lordships had heard the Judges Opinion as to there being but one Witness to an Overt Act, he did not observe their Lordships had declar'd their own Judgments one Way or other; that the proving a general Plot of the Papists, did not concern him; he hoped their Lordships would not censure him as a Papist upon common Fame, but proceed *Secundum allegata & probata*, and he thought there was not one Word of Proof that he was a Papist. Then his Lordship was pleas'd to repeat some of his former

Observa-

He repeats some Proofs of Law he had insisted on before.

Observations on the Evidence. He goes on, and says, great Importunity had been used by his Friends, especially by his Wife and Daughter, that he wou'd discover what he knew of the Plot, and he wou'd now, in the Presence of God, declare what he knew.

He said, he did believe, that since the Reformation, those of the Church of *Rome* had contriv'd several wicked Plots; he did admit there was a Plot by *Babington* and others in Queen *Elizabeth's* Time, but whether it extended to the taking away of the Queen's Life he cou'd not tell; he did acknowledge also, that there was another Plot call'd the Earl of *Westmoreland's* Plot, which was a very ill Design; but as for the poisoning of the Queen's Saddle, and the like, he look'd upon them to be but Stories.

In King *James's* Time, he said, he admitted there was a Plot by Men of both Perswasions, whetein the Lords *Grey*, *Cobham*, *Brook*, and Sir *Walter Raleigh* were concern'd, upon which Sir *Walter Raleigh* was beheaded, and the Lords died in the Tower: Then follow'd that execrable Treason, the Powder-Plot, for which he thought the Wits of Men or Devils cou'd not invent an Excuse, (he always abhorr'd the Persons concern'd in it:) That the Conspirators confess'd it, and begg'd Pardon of God and the King, and all good Men, for it.

He said, that since his Majesty's Restoration, he had been indulgent to all Dissenters, and particularly to those of the Romish Church, who were allow'd the Exercise of their Religion in their private Houses; and it was not long since their Lordships allow'd all Dissenters from the Church of *England* to give their respective Reasons why the Penal Laws, they are obnoxious to, ought to be repeal'd, and why, as well those of the Church of *Rome*, as the rest, shou'd have some kind of Toleration: But it came to nothing.

However, after this, he did believe that those of all Perswasions had their Consultations, among themselves, how to obtain a Toleration; and his Lordship was of Opinion that this Nation cou'd

The Prisoner declares his Opinion of the several Plots charg'd on the Papists since the Reformation.

A Toleration granted by King *Charles II.* to all Dissenters.

The Dissenters permitted to offer their Reasons to the House of Lords against the Penal Laws.

never

A Comprehension drawn'd.
Page 698.

never be happy till an Act of Parliament pass'd to that Effect; that it was his Opinion then, and he did endeavour it, all he cou'd, that the dissenting Protestants might have a Comprehension, and the other a Toleration; and by the Commons Votes there appear'd such a Thing was designing as a Comprehension: That his Lordship did observe, from Mr. *Coleman's* Letters, he was endeavouring, by procuring Money from *France*, to keep off a Parliament and gain a Toleration, which his Lordship did not think justifiable by Law, tho' how far it was Criminal he wou'd not pretend to say; *Coleman* had paid severely for it.

That from *Coleman's* Letters, and other Things that appear'd in Print, he did believe there had been some Consultations to obtain a Toleration; and had he known as much before as he did since he came to the Tower, he might have prevented many Things: And had he known of any such Design as *Coleman's* Letters hinted at, he wou'd not have continued in *England*. That as for that damnable Opinion of King-killing, if he were of any Church that own'd such a Principle, he wou'd leave it; that he knew not a Tittle more of the Plot, and if he did he shou'd hold himself bound to declare it: That he was under great Disadvantages, in having Gentlemen who were Scholars, and Men of Learning, and of great Understanding in the Law, reply upon him who was defective in all these Particulars; and therefore hoped their Lordships wou'd not conclude him upon what either they or he had offer'd, but be pleas'd to debate the Matter among themselves, and be as well his Counsel as his Judges.

The Prisoner offers a Paper to the Court, which the Managers oppose the reading of.

Then the Prisoner deliver'd in a Paper, which he desir'd their Lordships wou'd read; for he said he was so disturb'd and confounded with the Noise and Shouting of the barbarous Rabble, that he knew not how to say any Thing pertinently.

Sir *Thomas Lee* oppos'd the Clerk's reading the Paper, as being an unprecedented Thing: Then the Lord High Steward directed the Prisoner to raise

raise his Voice and read his Paper himself, which he did, *but it containing nothing material, which his Lordship had not offer'd before, is not inserted here, it being our Business to avoid all unnecessary Repetitions.*

The Prisoner again insisted to have his Council heard, but the Lord High Steward told him, that as to there being two Witnesses to every Overt Act, the Judges had deliver'd their Opinions, and there was no more to be said in it; and as to the Continuance of Impeachments from Parliament to Parliament, they shou'd debate that among themselves, and wou'd not suffer Counsel to debate the Constitutions of Parliaments; and as to Words being an Overt Act, they had no such Case now before them; there was a great Difference between bare Words and Perswasions, by Promises and Rewards, to kill the King; there was no Doubt but the latter was a very great Overt Act.

Page 699.

Then his Lordship repeated some other Parts of his Defence, and concluded that he had now offer'd what he thought proper upon the Occasion; and thus much, he thought, he ow'd to the Memory of that great King, who call'd him up to the House of Peers forty Years ago, that it might not be said he did fly in the Face of his Son in so horrible a Manner as the Charge set forth: That he ow'd thus much to his Father and Mother, for he wou'd not have them, and the Family from whence he sprung, dishonour'd by having it said, that any that bore their Name had committed Treason: That he ow'd thus much to his Wife, who descended from that great unfortunate Man, *Stafford Duke of Buckingham*, who was cut off in the Reign of *Henry VIII.* that she was Heiress to all that great Estate, which wou'd have amounted to 200,000 *l.* a Year at this Day, and wou'd have come to her, if it had not been for the Attainder of that Duke; and he wou'd not have it said she was the Widow of a Traitor: That he ow'd thus much to his Children, his Friends, and Relations, but above all, to God Almighty, who entrusted

Page 700.

His Lordship concludes with solemn Proclamations of his Innocence.

The Managers reply to what his Lordship left off.

Page 701.

trusted him with what he had; and he hoped there was not one even of the House of Commons but after this Evidence would clear him: That he had clear'd himself before the Lords, and he hoped he shou'd not be run down by a wicked Rabble: That thus it began in the late Times against my Lord *Strafford*, and so continu'd till it ended in the most execrable Act that ever was done: And he did again, in the Presence of God, Angels, their Lordships, and all Men, again declare, he knew nothing of the Plot: That he believ'd those of the Romish Religion had such Meetings as he mention'd before, but he never was at any of them, nor did he know what was done there; and he did, with all Submission, resign himself to their Lordships Justice.

The Managers reply'd, as to the Arguments his Lordship had drawn of his Innocence from the Obligations he lay under, that the Question was, Whether he had done it or no; and if he had, his Obligations were an Aggravation of his Crime, not an Excuse: As to the Noise and Shouts of the People, that had occasion'd any Disturbance to his Lordship, and which his Lordship complain'd of, he cou'd not mean or impute it to them, for they had treated his Lordship with that Respect that became his Dignity, and the Discretion that ought to be in the Managers of the House of Commons: But his Lordship's Distraction rather proceeded from those Friends, or Counsel of his, who put those many Papers into his Hand containing the same Matter, which he read over and over again, and this, indeed, was enough to distract any Man. — That had not the Cause been of an extraordinary Nature, they shou'd have stood upon it that the Prisoner ought not, after the Prosecutors had concluded, to have taken a Liberty of reading and repeating what he had said over and over again; indeed, there were a Sort of Men who would lay Hold of any Pretences to cavil at their Proceedings, and therefore they had permitted his Lordship to take all that Liberty, that his Party might have no Colour of Complaint.

Then

Then the Lords adjourn'd to the Parliament Chamber, and the Commons withdrew to their House, where they receiv'd a Message from the Lords that they would proceed in the Tryal of the Earl of *Stafford* at Eight the next Morning.

The Lords adjourn.

Tuesday the 7th of *December*, 1680.

7th Day.

The Lords being set, and the Lord High Steward on the Wool-pack, *Garter*, principal King at Arms, the Usher of the Black Rod, and Nine Maces attending him, the Lord High Steward took the Votes of the Peers, beginning with the *puisne* Baron, and so upwards, the Prisoner (as the Law requires) being absent.

The Lord High Steward takes their Lordships Votes.

Page 702.

The Lord High Steward, having taken and number'd the Votes, declar'd, that Thirty one of the Lords thought the Prisoner Not Guilty, and that Fifty five had found him Guilty. [Among the latter were the Lord High Steward, and Prince *Rupert*, Duke of *Cumberland*.]

Thirty one find Not guilty, and 55 Guilty.

Then the Lieutenant of the Tower was commanded to bring his Prisoner to the Bar, which being done, the Lord High Steward acquainted him, that their Lordships found him guilty of the Treasons whereof he was impeach'd; whereupon the Lord *Stafford* said, *God's holy Name be prais'd for it*: And it being demanded what he had to say why Judgment of Death shou'd not pass upon him according to Law, his Lordship answer'd, He confess'd he was surpriz'd, he did not expect it, but he conceiv'd he had something to offer that might respite Judgment; and first, that he was not commanded to hold up his Hand at his Arraignment. 2d, That there was nothing more in the Act of the 25. *Edw.* 3. on which he was impeach'd, than in the 13th of the King, in which last there was a Proviso, that a Peer found guilty of the Crimes therein mention'd, shou'd only lose his Seat in Parliament; he thought there was no other Punishment, and he desir'd their Lordship's Opinion on these Points.

After which, the Lords adjourning to the Parliament Chamber, the Commons withdrew to their House, and their Speaker having resum'd the Chair, the whole Body of their House went with

The Lords adjourn to their House.

Page 703.

The Commons, with their Speaker, go up to the Lords House and demand Judgment.

with their Speaker to the Bar of the House of Lords to demand Judgment of High Treason against *William Vicount Stafford*, upon the Impeachment of the Commons, &c.

The Judgment for High Treason must be in the usual Form.

The Commons being return'd to their House, the Lords took into Consideration what Judgment shou'd be given, and it was mov'd that he might be beheaded; but the Opinion of the Judges being demanded, as to the Consequence of such a Sentence, they answer'd, that the Judgment for High Treason, in Law, was to be drawn, hang'd, and quarter'd; and in the Courts below they cou'd take Notice of no Judgment for High Treason but that.

Or the King loses his Forfeitures, &c.

Sir G. Levins, his Majesty's Attorney General, also having obtain'd Leave to be heard by the House, upon that Point, said, That if any other Judgment was given, it wou'd be prejudicial to his Majesty: Whereupon the Lords resolv'd that the usual Sentence, in Cases of High Treason, shou'd be pronounc'd; and a Message was sent to the Commons, that their Lordships were going, forthwith, into *Westminster-Hall*, to give Judgment against *William Vicount Stafford*.

The Lord High Steward's Speech to the Prisoner before Judgment.

The Lords and Commons being return'd to their Places in *Westminster-Hall*, and the Lord High Steward being attended as before, eight Serjeants at Arms, with their Maces, kneel'd, and the ninth made Proclamation for Silence: After which, the Lord High Steward made a Speech, wherein he acquainted the Prisoner, that their Lordships had taken into Consideration what he had offer'd in Arrest of Judgment; and that it was no essential Part of the Tryal that the Prisoner shou'd hold up his Hand; that the Court often proceeded against such as refus'd to hold up their Hands; and as to the Proviso's in the 13. Car. if his Lordship had been indicted upon that Statute, as he was not, they wou'd not be applicable to his Lordship's Case. — He said, his Part that remain'd was very sad, being to give Sentence of Death upon a Man, which he had never done before, and he was extremely sorry he must begin with his Lordship. —

A Peer need not hold up his Hand.

That

That there had been a general Conspiracy of the Papists, wherein the Death of the King was a principal Part, he thought was apparent beyond all Possibility of doubting; and as the Plot in general was most manifest, so his Lordship's Part in it, he said, was too plain: And having bestow'd some pious Exhortations on his Lordship, as to his Preparation for Death, he pronounc'd the usual Sentence in Cases of High Treason.

Page 704.
Judgment pronounc'd to be drawn, hang'd, and quarter'd, &c.

The Prisoner desir'd his Friends and Relations might come to him, whereupon the Lord High Steward acquainted him, that their Lordships wou'd be humble Suitors to his Majesty to remit all the Punishment but the taking off his Head.

His Majesty order'd the Lord High Chancellor to issue a Writ, under the great Seal, to the Lieutenant of the Tower, to deliver the Prisoner on the 20th of *December*, 1680, between Nine and Eleven in the Forenoon, to the Sheriffs of *London* and *Middlesex*: And another Writ to the Sheriffs to receive him into their Custody, and lead him to the usual Place, upon *Tower-Hill*, and there cause his Head to be cut off.

The King issues a Writ to the Sheriffs to execute the Prisoner, by cutting off his Head only.

There were two Writs deliver'd to the Sheriffs, both exactly alike; one was deliver'd to them in *London*, and the other in *Middlesex*: But the Sheriffs doubting whether this was a sufficient Authority for their beheading him only, when he had Sentence to be drawn, hang'd, and quarter'd, &c. they petition'd the Lords, that since they had not receiv'd any Command from their Lordships for executing the said Judgment, they wou'd please to make such Order therein as shou'd be agreeable to Right and Justice; whereupon their Lordships declar'd that their Scruples were unnecessary, and that the King's Writ ought to be obey'd.

Page 705.
Slingby, Bethel, and Henry Cornish, Sheriffs, apply to the Lords, who declare the King's Writ ought to be obey'd.

The Sheriffs also made Application to the Commons, who thereupon resolv'd that they were content that the said *William*, late Vicount *Stafford*, shou'd be executed, by severing his Head from his Body only.

Execution varies from the Judgment.

And he was executed, by severing his Head from his Body.

He is beheaded.

Page 706.

The Proceedings of the Court of King's Bench, in the Case of EDWARD FITZ-HARRIS, Esq; in Easter Term, 33 Car. 2. 1681.

Wednesday the 27th of April 1681, the Grand Jury for the County of *Middlesex* were sworn. And after Mr. Justice *Jones* had given the Charge, Mr. Attorney desir'd, that some of the Grand-Jury, who serv'd for the Hundreds of *Edmonton* and *Gore*, might be present at the Swearing of the Witnesses on an Indictment against *Edward Fitz-Harris*, a Prisoner in the *Tower*, which was granted: And the Grand-Jury having some Scruples about finding the Bill, Mr. Justice *Jones* directed them to attend the next Day, when the Court wou'd be full.

Thursday the 28th of April, the Grand-Jury came to the Bar, and Mr. *Michael Godfrey*, (Brother to Sir *Edmund Bury*) who was Foreman of the Jury, desir'd, that before they proceeded upon the Indictment, that *Fitz-Harris* might be examin'd about his Brother's Death, of which he suppos'd he knew much, and mov'd the Court to grant an *Habeas Corpus* to fetch up *Fitz-Harris*: Then he deliver'd in a Paper in Behalf of himself and the rest of the Grand-Jury; importing, that the Day before, they heard Sir *William Waller*, and others, sworn in Court, in order to their giving Evidence against *Fitz-Harris*, who in the late Parliament at *Oxford* was impeach'd by the House of Commons, in the Name of themselves and of all the Commons of *England*, of whom the Grand-Jury were part, They therefore desir'd the Opinion of the Court, whether it were lawful and safe for them (in Case an Indictment of the said *Fitz-Harris* shou'd be brought before them) to proceed to examine Witnesses in Reference to the said Indictment, or any Ways meddle with it, notwithstanding the said Impeachment and the Votes of the House of Commons upon it.

The Grand-Jury doubt whether one who is impeach'd for Treason may be indicted for Treason.
Page 707.

The

The Lord Chief Justice answer'd, That as to the Impeachment of the Commons, which was not receiv'd by the Lords, and the Vote of the Commons, that he should not be try'd by any inferior Court, they were bound by their Oaths to enquire, if any such Indictment was exhibited to them, and ought not to take Notice of any such Impeachment offer'd to the Lords, or of any such Votes in the House of Commons, if any such there were, for they could not excuse them who were sworn to enquire of the Matters given them in charge; and if they had Evidence enough given them to satisfy them that the Indictment was true, they were to find it; and the Court ought to proceed upon it according to Justice; and that this was the Opinion of all the Judges of England, who had assembled and debated this Matter.

The Court resolve that he might be indicted, tho' the Commons had voted he should not be try'd by any inf. riot Court.

Then the Grand-Jury withdrew, and found the Bill.

Friday the 29th of April 1681, Sir Thomas Stringer, the King's Serjeant, mov'd for an *Habeas Corpus* robring up the Body of Fitz-Harris, to be examin'd by the Court about the Death of Sir E. Godfrey, which was granted.

Saturday the 30th of April, Mr. Serjeant Stringer inform'd the Court that Fitz-Harris attended, and desir'd he might be examin'd of Sir E. Godfrey before he was arraign'd, but the Court directed he should be arraign'd first.

Mr. Fitz-Harris acquainted the Court, That he had been close Prisoner for ten Weeks, not having been permitted to see any one, and desir'd he might advise with his Friends.

Mrs. Fitz-Harris put a Plea into her Husband's Hand, and advis'd him to plead to the Jurisdiction of the Court: And Mr. Fitz-Harris desir'd it might be read by the Clerk; but was told by the Court, he must first hear the Indictment read, and plead afterwards.

Then the Indictment was read; after which Fitz-Harris again offer'd his Plea, which the Court directed to be read, but said they did not allow it.

The Indictment is read.

The Plea set forth, That the Prisoner, at a Parliament held at Oxford the 21st of March, in the

Page 708.
Fitz-Harris offers
 a Plea in Paper,
 that he is im-
 peach'd for the
 same Treason.

The Court assign
 him Counsel,
 and give him
 Time to mend his
 Plea.

Page 709.

A Rule made,
 that his Counsel
 and his Wife
 might come to
 him.
 He is examin'd
 concerning the
 Murder of *Godfrey*
 Page 710.

33d Year of the King, was impeach'd for the afore-
 said Treason, and therefore pray'd the Judgment
 of the Court, whether he cou'd be compell'd to
 answer this Indictment; averring, that the Treason
 for which he was indicted, was the same Treason
 for which he was impeach'd; and that the
 said Impeachment still remain'd in its full Force.

The Chief Justice acquainted the Prisoner, That
 they did not use to receive such a Plea without a
 Council's Hand to it: Whereupon the Prisoner
 desir'd Council might be assign'd him; and the
 Court assign'd Sir *Francis Winnington*, Mr. *Williams*,
 Mr. *Pollexfen*, and Mr. *Wallop*; and told the Prisoner
 he wou'd do well to consider, lest a Plea of this
 Nature shou'd be more fatal to him than he ex-
 pected; and told him, they wou'd give him Time
 till *Tuesday* next, to advise what Plea he wou'd
 rely upon, and in the mean time Things shou'd
 stand as they were.

The Prisoner desir'd his Wife and his Council
 might have Access to him, which was granted;
 but the Court told Mrs. *Fitz-Harris*, that she must
 submit to be search'd when she went to her Hu-
 sband, and his Keeper must be present when she
 was with him.

Then the Prisoner desir'd longer Time to pre-
 pare his Plea, but was told by the Court, if they
 wou'd insist upon it, he ought to plead presently;
 and the Time they had condescended to allow
 him was an unusual Favour: However, upon the
 Prisoner's Importunity, the Court did consent,
 that if the Prisoner deliver'd a Copy of his Plea to
 Mr. Attorney on *Tuesday*, he shou'd have 'till
Wednesday to put it in.

Mr. Lieutenant of the *Tower* desir'd the Court
 wou'd make a Rule for the Prisoner's Wife and
 Council to come to him, for his Discharge, and this
 was directed to be made Part of the Rule.

Then the Prisoner was carry'd into the little
 Room belonging to the Court of King's Bench, and
 examin'd by the Chief Justice, &c. about the
 Murder of Sir *E. Godfrey*; after which he was re-
 manded to the *Tower*.

Monday

Monday the 2d of *May*, the Council assign'd the Prisoner, mov'd, that the Rule made for their attending the Prisoner might be mended, it seeming doubtful whether they might be with him alone; whereupon the Court declar'd, they intended they shou'd be with him alone.

The Prisoner's Council also mov'd, that the Time for Pleading might be enlarg'd; and that they might have a Copy of the Indictment: The Court refus'd to give farther Time; and as to a Copy of the Indictment, Mr. Justice *Dolben* said, It had been always deny'd in Cases of Treason and Felony: Indeed some Heads out of the Indictment had been sometimes granted, to enable the Party to suit his Plea to the Charge, as was done in *Wittipole's* Case, upon a Plea of *Auer seis acquit*.

Page 711.

Indictment, a Copy of the Heads sometimes granted.

Mr. *Williams* said, in the Case of *King* and *Thomas*, wherein he was Council, *Thomas* was indicted of Murder in one County, and found guilty of Manlaughter, and was afterwards indicted for the same Murder in another County; and, upon alledging as in this Case, that it was impossible to plead without, they had a Copy of both Indictments; but the Court seeming averse to the granting a Copy, Mr. *Williams* and Mr. *Wallop* desir'd that other Council might be assign'd in their Rooms: The Court answer'd, they cou'd not discharge them, they being assign'd at the Request of the Prisoner: And the Court added Sir *George Treby* and Mr. *Smith* to the Council already assign'd, at the Prisoner's Importunity; as also a Solicitor to go between the Prisoner and his Council.

Page 712.
Council assign'd a Prisoner cannot be discharge'd without his Consent.

Wednesday the 4th of *May* 1681, *Fitz-Harris* was brought again from the *Tower* to the King's Bench Bar, and producing his Plea, and desiring it might be receiv'd and allow'd, the Court order'd it to be read, and it was much the same with the Plea he tender'd before, and concluded *Unde ipse prad.* *Edwardus Fitz-Harris, petit judicium si Car. Dom. Reg. hic super Indictamentum prad. usus ipsius ulterius procedere vult, &c.*

Page 713.
Fitz-Harris puts in a Plea to the Jurisdiction of the Court.

Mr. Attorney said, This Plea was no more, in Effect, than what was offer'd before; but that they

they had not attended him according to the Rule of Court, but sent him only a Note Yesterday, that *Fitz-Harris* intended to stand upon his Plea, *That he was impeach'd in the House of Peers*: That he sent to them to know whether they would plead this to the Jurisdiction, or in Abatement, or in Bar, and they declar'd they would not plead to the Jurisdiction, but now he saw it was to the Jurisdiction.

L. C. J. And as a Plea to the Jurisdiction, so it concludes.

Mr. Williams. The Court directed us to attend Mr. Attorney with the Substance, and so we did; but as to the Form, we had Liberty to do as we pleas'd.

Page 714.

Sir *Fr. Winnington*. My Lord, We sent to the Clerk of the House of Lords, to obtain a Copy of the Impeachment in Parliament; but the Clerk was out of Town, and we could not get it, or else we had sent Mr. Attorney the whole Plea Yesterday.

Mr. Attorney
shews the Plea
was defective,
both as to Matter
and Form.

Mr. Attorney. My Lord, This is a Plea to the Jurisdiction of the Court, and whoever will plead such a Plea, must have the Record ready to assert to the Court that they have not Jurisdiction; and, besides, they have not pleaded any Record or Impeachment at all; but say only, that he was impeach'd by the Commons *de alta Proditione*, which is naught: He ought in his Plea to have set forth his Impeachment, and for what Crime particularly; An Indictment or an Impeachment *de alta Proditione*, or *Felony*, or any other Crime is naught; the Law allows not of it; and he must not aver upon a Record, but set it forth *in hac verba*, or the Substance of it. But in this Case, here is nothing of Treason specify'd in the Record averr'd, that can intend it to be the same Treason for which he is indicted.

An Indictment
for Treason or
Felony generally
is not good.

L. C. J. Do you think it prudent to argue it at this Time; or will you take a Day to consider of it?

Then the King's Counsel consulted together: After which Mr. Attorney went on.

Mr.

Mr. Attorney. We can't see that this amounts to a Plea to the Jurisdiction of this Court; for, upon any Impeachment or Indictment, the King hath Election to proceed upon which he will; and so, if there be ten Indictments, if none of them are come to Judgment, the King may proceed upon which he will; and in *Plunket's Case*, who was arraign'd, and ready to be try'd in *Ireland*, yet the King has order'd he shall be try'd here: This Court of King's Bench hath a sovereign Jurisdiction of Commoners especially, and can take Cognizance of it; therefore this is not only a false, but a frivolous Plea, and such a one as was never pleaded to your Jurisdiction, and therefore we pray your Judgment upon it.

Mr. Solicitor. It will not be a Question now, how far an Impeachment depending, is a Bar to your Jurisdiction: but whether this be really a Plea to your Jurisdiction, for no Man can plead any Record in another Court, either an Indictment, or Acquittal upon it, without setting forth the Indictment and all the Proceedings of that Court upon that Record: And when such a Plea is put in, we shall either demur to it, or give it the Answer that it requires of *Nathiel Record*; but this does not require any particular Answer, because it sets forth no Record at all that we can answer to.

Mr. Serj. *Maynard*. He cannot plead a Record in general Terms, and give you the Title only, or say he was indicted for such a Thing generally, but he must so set it forth to the Court, that if Issue be taken, the Court may, by comparing the Record with the Plea, judge whether it be the same Matter or no: Indeed a Man need not set forth a general Act of Parliament, but if he will plead a particular Act, he must set forth the Matter of it, to bring his Case under the Judgment of the Court.

L. C. J. Do you speak against our receiving the Plea?

Mr. Attorney. Yes, my Lord: We hope you will not admit such a Plea.

Page 715.

A Record cannot be pleaded in General Terms.

A Private Act must be pleaded specially.

L. C. J. Admitting it be an insufficient Plea, shou'd you not demur to it before you demand our Judgment, that we may have somewhat upon the whole before us to judge upon?

Mr. Serj. *Maynard*. Where a Plea is apparently vicious, when it is upon Record, we need not demur to it, or take Issue; for then the Mischief will be, we shall admit all that is well pleaded to be true.

Mr. Serj. *Jefferies*. If there be a Doubt upon a Plea that is read, whereupon a Point of Law may arise, you do usually put the Party to demur, or take Issue; but if the Plea doth appear in its Nature frivolous, you do often refuse to admit such a Plea, and give Judgment upon it: And shou'd we be put to demur to it, we shall, by that, admit, that the Impeachment and Indictment are for one and the same Thing; and we conceive, that is a little dangerous.

L. C. J. You need not be afraid you shall be concluded by this Demurrer: That there is such an Impeachment in the House of Lords for the same Offence, there is no Colour for it; And formerly, I confess, when they pleaded *Pleas Ore tenus*, and took their Exceptions *Ore tenus* too, they wou'd demand Judgment of a Plea presently; and so it was in the Bishop of *Winchester's* Case, 3 *Edw. 3.* but now they are grown into a formal Way; all enter'd upon Record, or at least written in Paper: And why shou'd you not go according to the common Course of the Court.

Serj. *Maynard*. It is true, the Course was anciently to plead *Ore tenus*, but pleading in Paper is the same Thing; and the Course of the Court is, when they see it in Paper to be a frivolous Plea, to give Judgment presently; and shou'd there be a Demurrer, it may hang longer than it is convenient this Cause shou'd do.

Mr. Attorney. I have look'd upon all the Precedents, and cannot meet with one Demurrer where the Plea was to the Jurisdiction.

L. C. J. If you insist upon it, and won't demur, or do any Thing, we will give Judgment; but we

Pleas Ore Tenus
heretofore.

we will take Time to consider of it, if you will neither demur, or take Issue, or reply.

Mr. Attorney. He hath not pleaded *prout patet per Record*.

L. C. J. But 'tis *prout patet in Rotulis Parliamenti*.

Mr. Attorney. I did not observe that; but I am ready to satisfy the Court 'tis a pure false and frivolous Plea, and then I offer it to your Consideration, whether you will give any Time, or presently reject it.

L. C. J. We will give them no Time; but the Question is, Whether Time shou'd not be taken, not in Favour of the Prisoner, but of the King and of the Court?

Mr. Attorney. I am ready to make it out, that 'tis all Fiction that is pleaded, and nothing in the Record to warrant it: I have a Copy of the whole Journal, and of the Transactions, in the House of Lords; but when 'tis a frivolous Plea, I hope there will be no Need of that Trouble.

L. C. J. But whether we can take Notice of the Journal-Book, as this Case stands, you had best consider.

Mr. Attorney. My Lord, I'll demur immediately.

Then the Clerk of the Crown drew up a general Demurrer, which being sign'd by Mr. Attorney, was read in Court.

Page 717.
Mr. Attorney demurs to the Plea.

Mr. Attorney. We pray they may join in Demurrer.

Mr. Williams. That your Lordship may be satisfy'd, we design no Delay, we will join in Demurrer.

Then the Clerk drew up the Joinder in Demurrer, which being sign'd by the four Gentlemen of the Prisoner's Counsel, was also read in Court.

The Prisoner joins in Demurrer

Mr. Attorney. My Lord, I desire your Judgment, that the Plea may stand over-ruled for a plain fatal Error in it: This is a particular Indictment, for framing a most pernicious and scandalous Libel against the King and Government: And they come and plead, generally, that the Prisoner was impeach'd *de alta Proditione*: And, as I offer'd before, I say now again, that they ought to be ready with the Record to justify their Plea: And

And this I insist upon, that to out a Court of its Jurisdiction for a particular Treason, it is not a good Plea to say, he was impeach'd or indicted generally of High Treason: Nor can any Averment help it: 'Tis rather to be intended another Treason, and not the same; and I pray your Judgment upon it.

Mr. Williams. We hope the Court will not tye us up to argue this Matter presently: And I desire to observe, tho' Mr. Attorney is pleas'd to say he never knew a Demurrer on a Plea to the Jurisdiction, it was allow'd in *Elliot's Case*, tho' the then Attorney oblig'd it; and the Court, in that Case, did not oppose the Council to argue the Plea presently, but gave them Time to the next Term; but we ask not so long a Time, tho' here is the Life of a Man and Privilege of Parliament concern'd in it: We ask no more Time than the Court shall think reasonable for us to be ready in: your Lordship did, in the Case of *Plunket*, which is as high a Treason, give him Time 'till the next Terme.

Page 718.

L. C. J. You would have People think you have strange Measure in this Case: Is your Case like *Plunket's*? He is brought from *Ireland*, and indicted for what he did in another Kingdom, and he desires Time to send for his Witnesses over, which we could not in Justice deny. This Case is very different from yours; and, I must tell you, when we assign'd Council to *Mr. Fitz-Harris*, we expected they shou'd be ready to maintain the Plea when they came here: What needed we, else, to have assign'd him so much Counsel, and given him so much Time to Plead.

Sir Fr. Winningan. In the Case of my Lord *Hollis*, (being but an Information for a Misdemeanor) tho' it was a Plea to the Jurisdiction of the Court, and they were at Liberty, and had Resort to all Papers and Books before the Plea pleaded; (which we could not have) yet the Court gave them Time: And I beseech your Lordship, that in order to do our Duty to the Court and our Client, we may have a little Time,

L. C. J.

L. C. J. If you had pleaded over, as I expected you shou'd, we might have given you Time, and not delay'd the King; but having not done that, it is in our Consideration, whether we will give you Time.

Mr. Wallop. I have been an unprofitable Attendant on this Court near 40 Years, and I never saw so swift a Proceeding: We pray we may not proceed, but according to the Rate of Modern Practice: Tho' they call it a frivolous Plea, I believe it is a Plea of the greatest Import that ever these Gentlemen were concern'd in here; and since it cou'd not be reasonably expected we shou'd come provided in this Case, we humbly pray such a reasonable Time as your Lordship shall think fit.

L. C. J. Come, will you plead over?

Mr. Pollexfen. We did consider of that when we were together, and were of Opinion, that wou'd destroy our Plea: We cannot plead over, but we give up the Jurisdiction.

L. C. J. Certainly, Mr. Pollexfen, *in favorem Vita*, it wou'd not hurt the Plea to plead over. Page 719.

Mr. Attorney. As to what has been said of the Modern Practice, I believe the Court was never so indulgent before, to give four Days to plead to the Jurisdiction of the Court; and I challenge them again, to shew any Instance of a Demurrer in a Case of this Nature; As to *Elliot's Case*, it was an Information: And to Pleas upon Informations, there have been Demurrers; but to Indictments found by 12 Men, we do not meet with a Demur any where to a Plea to the Jurisdiction: And for those high Matters they talk of, they can never come in Question upon this Plea.

Mr. Attorney says, there was no Precedent of a Demurrer in a capital Case before.

[At length Time was given them to maintain the Plea till the *Saturday* following; but then the Court told them, that if Judgment were against the Plea, they must plead in chief presently, and that they must not pretend want of Notice, or that their Witnesses were out of the Way, to put off the Tryal.]

Page 720.
Time is given the Prisoners Counsel to maintain their Plea.

Sir Fr. Winnington. I desire we may have a Copy of the whole Record,

Page 721.
A Copy of the Indictment deny'd them.

L. C. J.

L. C. J. Not of the Indictment, but of the Plea and Demurrer you may: The Indictment shall be in Court, and if you have any Occasion to refer to it, we will look upon it.

Then the Prisoner was remanded to the Tower.

Saturday the 7th of May 1761, Mr. Fitz-Harris was brought again to the King's Bench Bar.

Mr. Attorney. My Lord, I wou'd lay my Finger upon those Points that will be the Questions between us: And first, we say, That the general Allegation, that he was impeach'd *de alta Proditione*, is uncertain, and too general, and is not helped by the Averment. 2dly. Here is no Impeachment alledg'd to be upon Record; for they make a general Allegation, that *Fitz-Harris*, such a Time, was impeach'd, *Impetitus fuit. Qua quidem Impetitus in pleno robore existit prout per Recordum, &c.* Now there was no Impeachment mention'd before, and therefore it cannot be good: If a Plea shou'd be *Indictatus fuit*, and afterwards it shou'd be said *Quod quidem Indictamentum, &c.* it cannot be good; for the Relative there is only illusive: These are the Exceptions to the Form. And we have this farther Exception to the Matter: That 'tis a Plea to the Jurisdiction of the Court; and the Point will be, whether a Suit depending even in a superior Court, can take away the Jurisdiction of an inferior Court, which had an original Jurisdiction of the Cause of the Person and of the Fact, at the Time of the Fact comitted? What Use might be made of it in the Bar, is another Consideration.

Mr. Williams's
Argument for the
Prisoner.

He recites the
Substance of his
Plea.

Mr. Williams. I am assign'd of Counsel for the Prisoner, and the Case stands thus: He was indicted this Term by one of the Grand-Juries of this County of High Treason: To this Indictment he hath pleaded, That he ought not to be compell'd to answer, because, that before the Indictment was found, at a Parliament held at *Oxford* the 21st of *March* last, he was impeach'd by the Knights, Citizens, and Burgeses of the House of Commons in Parliament assembled, in the Name of themselves, and of all the Commons of *England*, of High Treason, before the Lords in Parliam-
ment:

ment : And that this Impeachment was remaining in full Force before the Lords, *prout per Recordum inde inter Recordum Parliamenti remanens plenius liquet & apparet* : And he avers, that the High Treason mention'd in the Indictment, and the High Treason specify'd in the Impeachment, are one and the same : And farther avers, that he is the same *Fitz-Harris* nam'd in the Indictment and mention'd in the Impeachment, and concluded to the Jurisdiction of the Court, whether upon the whole they will proceed any farther against him upon this Indictment, and demands the Judgment of the Court to that Purpose.

Upon this Plea Mr. Attorney demurr'd generally ; and we have join'd in Demurrer : Now, upon this Demurrer, I take these Things to be admitted : First, That the Prisoner stands impeach'd by the Commons for High Treason. 2dly. That this Impeachment is now in Being. 3dly. That this was done *secundum legem & Consuet. Parliamenti* ; and being so, remains *in plenis suis Robore & effectu*. 4thly. That the Treason for which he is impeach'd, and the Treason for which he is indicted, is the same : And that the *Fitz-Harris* who was impeach'd, is the same Person who is indicted : That the Impeachment was before the Indictment ; and that the Parliament is still in Being : These Points, we conceive, are admitted on the Demurrer.

And, by the Way, I suppose it will not be deny'd but the Commons may impeach a Commoner of High Treason before the Lords in Parliament. This was the Case of *Trefilian* and *Belknap*, as 'tis reported by my Lord Chief Justice *Vaughan* in *Busbel's Case*.

As to what Mr. Attorney says, That an inferior Court having original Jurisdiction of the Person and Cause, may proceed, notwithstanding an Indictment in the superior Court : I take the Case of an Impeachment to be different from that of an Indictment ; and that an Impeachment is rather like an Appeal : As an Appeal is at the Suit of the Party, so an Impeachment is at the Suit of the Commons : An Indictment is found upon the Presentment of a Grand-Jury, who are sworn *Ad*
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Page 722.

He compares an Impeachment to an Appeal.

Inquirendum pro Domino Rege pro Corpore Cam; and the Form is mistaken, when it is said, *Et pro Corpore Cam*, for it is not for the King and the Body of the County, but for the King for the Body of the County; so that an Indictment is for the King, an Impeachment for the People: The Commons are Prosecutors on an Impeachment, they manage the Evidence, and Judgment is given at the Prayer of the Commons: There are no Proceedings by the Attorneys; indeed Attempts have been by Attorneys, to prosecute Persons in Parliament, but what Success they have had I leave them that are concern'd to consider.

Page 723.

And I take it, It does not become the Justice of this Court, to weaken the Methods of Proceedings in Parliament, as this Court will certainly do: If after, there is an Impeachment depending in Parliament, they will admit an Indictment here: This is to subject the Proceedings in Parliament to this Court; and what the Consequence of that will be, is worthy of Consideration: And it wou'd be strange, if that supream Court shou'd be controul'd by an inferior: This does not stand with the Wisdom of the Law, or the Constitution of the Government.

Another Thing. It is without Precedent, and consequently there is no Law for it: This is my Lord Coke's Argument in his Comment on Littleton, Fol. 108, and in his 4th Inst. 4. 17.

He doubts if the King can pardon one impeach'd.

Another Mischief that will follow upon this, is, That in the Case of an Indictment, it is, in the Power of the Prince to pardon; but in the Case of an Impeachment, I take it to be otherwise; as 'tis in the Case of an Appeal: But if this Court can try a Person impeach'd, then let Crimes be never so heinous and dangerous to the Government, and so fit for the Consideration of Parliament, by possessing this Court of the Cause, you expose them to the Will of the Prince; and so these Crimes, which are impardonable by Methods of Proceedings in Parliament, wou'd become pardonable.

And, my Lord, shou'd you meddle with this, you wou'd put a Man twice in Danger of his Life for one Thing: For, suppose you proceed upon this

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this Indictment, and the Prisoner be acquitted, will that Acquittal bind the Lords in Parliament? And if it will not, you invade that common Right which every *English* Man, by Law, ought to have preserv'd to him, that he shou'd not be twice brought in Danger for the same Thing.

And I take it to be a critical Thing, now at this Time, to make such an Attempt; for by the same Reason that this Court may proceed, his Majesty may appoint a High Steward to try the Lords in the *Tower* by a Jury of Peers; and had this been practis'd in the Case of my Lord *Stafford*, no doubt but he had been now alive: So that this Proceeding will be a very imprudent Thing, if not illegal; and I am sure it will have this Effect: It will stir up a Question between the Jurisdiction of this Court and the Court of Parliament; for if he be found guilty here, the Power of the Commons, in Impeaching, and the Jurisdiction of the Lords, in Tryal and Judgment, are taken away by an inferior Court.

As to that Objection of Mr. Attorney's, That this Plea doth not set forth any Record of an Impeachment, or the particular Matter of it, so as the Court may judge of the Reason of it; and he compares it to the Case of a Plea of *Auter foisz acquit*. I answer, That in the Case of *Auter foisz acquit*, there is an Indictment, proceeding of the Court upon the Plea, a fair Tryal and a fair Acquittal, and a Record of all this Matter; and if the Person be indicted again, and do not plead this Record, it is his own Fault: But in this Case, here is no such Record to plead, and that is the Mistake Mr. Attorney has gone upon all along; for in this Case, you must be govern'd by the Rules and Methods of Parliament: Here the Commons carry up this Impeachment to the Lords in general, and have Liberty of presenting Articles in due Time. This is no Record, such as may be had in the Case of *Auter foisz acquit*, for there is only enter'd in the Lords Journal, That such a Day such a Person came from the House of Commons and impeach'd such a one: Here are not the same strict Methods and Forms of Proceeding

Page 724.

as in the Courts of *Westminster-Hall*; and we have said enough, and as much as can be, in our Case: That there was an Impeachment of the Commons before the Lords, which is *in pleno Robore & effectu*; and that it was *secundum legem & Consuetudinem Parliamenti*, prout patet inde inter *Recorda remanens*, &c. which is as much as if we had set forth the Record itself; and we take it, 'tis a very full Plea, tho' it be not pleaded particularly; for in Parliamentary Matters, your Lordship is to judge according to the Methods of Parliament.

And in the Case of my Lord *Shaftsbury*, who was committed for an High Contempt committed in the House of Lords, the Reason given by the Judges why they cou'd not bail my Lord was, That as this Court takes Notice of the Courts in *Westminster-Hall*, they ought also to take Notice of the Course of Parliaments and House of Lords: And if you are bound to do so in other Cases, you are bound to do so in this: And I make Use of it to this Purpose, that we need not say *secundum legem & Consuetudinem Parliamenti in hoc*, in this, and that, and t'other Particular; but the Court is to look into it without my pointing to the particular Law of Parliament.

As to that Exception, that the King may chuse his Court, there is no Doubt but he may do it in his own Action or Suit, but this is an Impeachment of the Commons, and their Suit is to be try'd no where else but in Parliament.

There is the Bishop of *Winchester's* Case, 3 Ed. 3. 2 Inst. Fol. 15. There the Record sets forth, That the Bishop was attach'd to answer the King; for that whereas at a Parliament held at *Sarum*, it was ordain'd *per ipsam Regem ne quis ad Doms. Parliament. summonitus ab eodem recederet sine licentia Regis*; and that the Bishop, in Contempt of the King's Recepit, without Leave: To this the Bishop answers, *Si quis deliquerit erga Dominum Regem in Parlamento Aliquo, in Parlamento debet Corrigi & emendari & non Alibi in Minore Curia quam in Parlamento*, &c. In this Case, they wou'd give no Judgment for the King; but for ought appears, the

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Plea stood; and what the Law and Course of Parliaments is, my Lord *Coke* there observes, the Judges will never intermeddle with.

In the other Case of Mr. *Plowden*, and many more, 2 *Phil. & Mar.* the Information set forth, That they were summon'd to Parliament, and departed without Leave, notwithstanding the King and Queen's Prohibition to the contrary: Most of them, indeed, submitted to a Fine, but Mr. *Plowden* pleaded to it, and says, He continu'd in the Parliament from the Beginning to the End; and brings a Traverse, *Absque hoc*, that he the said *Edmond Plowden*, the said Day and Year, during the said Parliament, without License of the said King and Queen, &c. did contemptuously depart in Contempt of the said King and Queen, and their Commandment and Inhibition, and to the great Detriment of the Commonwealth and State of the Kingdom, &c. This, your Lordship knows was a very ill Traverse, and yet this Case continu'd all the Time of the Queen; for it appearing upon the Face of the Information, that it was a Case which concern'd the Commons, the Court wou'd not give Judgment for or against them.

In the Information against my Lord *Hollis*, Sir *John Eliot*, and others, for an Assault, and Words spoken in Parliament, upon a Demurrer, the Court did give Judgment generally, That this Court had Jurisdiction: But we know very well that Judgment was revers'd in the 19th of this King, by Writ of Error; but shou'd your Lordship give Judgment against this Plea, and the Prisoner shou'd be obstinate, and not plead over; and thereupon your Lordship shou'd give Judgment of Death upon him, and he shou'd be executed, tho' a Writ of Error do reverse the Judgment, it cannot restore him his Life.

My Lord, There is an old Case 20 *Rich. 2.* a Person presented a Petition to the Commons, in which there were some Expressions held to be treasonable; for which he was indicted out of Parliament, and convicted; (and afterwards he was pardon'd) but because the Commons wou'd not rest

under that Precedent, which they took to be an Invasion of their Privilege, (tho' he was a Person without Doors who prepar'd the Petition, and no Hurt done him but in the Prosecution) that Judgment was voided.

And now, my Lord, we do not only offer these Reasons both as to Matter and Form, but here is the Life of a Person, the Right of the Commons to impeach, and the Judicature of the Lords to determine that Impeachment before you; how far you will lay your Hands upon this Case, thus circumstantiated, we must submit to you, but I hope you will proceed no farther on the Indictment.

Page 728.

Averments necessary in Pleading.

Page 729.

Sir *Fr. Winnington*, of Counsel also with the Prisoner, repeated many of the Arguments used by *Mr. Williams*; and as to the Plea being so general that the Court cou'd not judge of it, he answer'd, That *Fitz-Harris* had averr'd, by his Plea, that he was impeach'd for the same Treason for which he was indicted, and this Averment made the Matter as clear to the Court as if the Impeachment had mention'd the particular Treason: That Averments, consistent with the Record, were good, and of Necessity to clear the Fact to the Court; and where one pleads a Recovery, in a former Action, in Bar to an Action of Debt, &c. it is not enough for him to set out the Record, but he must aver also that the Causes of Action are the same, and that 'tis the same Person mention'd in one Record as in the other, so that the most special and particular Pleas are of no Use without Averments: That there is a Case, 26. *Afs. Pl.* 15. mention'd also in *Stamf. Pl. Cor.* 105. where a Man was indicted for the Murder of *J. S.* and pleads a Record of Acquittal for the Murder of *J. N.* averring that *J. S.* in this Indictment, is the same Person with *J. N.* in the other Indictment, and that this was adjudg'd a good Plea, and the Party acquitted, tho' the Averment there seem'd contradictory to the Record: Now *Mr. Attorney* might have pleaded *Nul tiel* Record, and then we must have produc'd it; but he has demurr'd, and

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and thereby confess'd there is such a Record, and confess'd the Averment to be true, that he was impeach'd for the same Crime, and that he was the same Person.

That it seem'd against natural Justice, that when the Commons, in the Name of themselves and of all the Commons of *England*, had lodg'd an Impeachment against any Man, that any Commoner shoud afterwards try or judge that Man for that Fact, every Commoner being a Party to the Accusation, and so does not stand indifferent; they might be Witnesses but not Judges.

Persons not indifferent ought neither to be Judges or Witnesses.

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He observ'd, That it was the Course of Parliaments to carry up general Impeachments, and afterwards particular Articles, as in the Case of my Lord *Clarendon* and the five Popish Lords. And it was observable, that Indictments were found against the Popish Lords before there were any Impeachments against them, and yet there was never any Attempt to try them upon the Indictments, tho' there had been several Intervals of Parliaments since those Impeachments: That their Case, therefore, was stronger than that of the Lords; for there the first Suit was by the King, but in this Case the first Suit was by the Commons; and they were told that the Opinions of the Judges had been deliver'd in Council, concerning these Lords, that Impeachments being lodg'd in Parliament, no other Prosecution cou'd be against them till the Prosecution of the Commons was determin'd.

Whether a Person can be indicted after he is impeach'd.

He said, it was the Opinion of the Court, in the Case of the Lord *Shaftsbury*, tho' it was agreed by all that the Commitment was too general, being only for a Contempt, whereas the Crime ought particularly to appear in the Warrant; yet it being in a Case of Commitment by Parliament, (at least, during the Continuance of Parliament) they ought not to meddle with it, nor cou'd they enquire into the Formality of the Warrant.

As for that Objection, That they had not set forth that there was an Impeachment, he did not know how they cou'd have done it better than

by saying the Prisoner was impeach'd, and that that Impeachment was in full Force, as appear'd by the Record; and concluded, That as this Plea stood, the Demurrer confessing the Matter of it, it cou'd not be over ruled without deciding whether the Lords cou'd proceed upon such general Impeachments, and whether the Commons cou'd impeach in such a general Way.

Page 731.

What Averments
shall be good, and
what not.

Mr. Wallop also, of Counsel for the Prisoner, said, as to the Objection, That because he was impeach'd of High Treason, generally, without naming any particular Treason, the Treason in the Indictment cou'd not be averr'd to be the same; and that a Demurrer does never confess the Truth of that which by Law cannot be said: He answer'd, that he conceiv'd this to be a good Averment, that, indeed, a repugnant or impossible Averment cou'd not be taken, as to aver a Horse was a Sheep, &c. but where there was no Impossibility or Repugnancy between the Matters, as there was not between that which was generally express'd, and that which was more specially alledg'd, and needed only some farther Explanation, there it was not only allowable to aver it, but most proper, and in such Case only necessary; for *quod constat clare non debet verificari*: And in this Case it was not necessary that it shou'd appear to the Court, upon View of the Indictment and Impeachment, that the Matter contain'd in both was the same; but it was sufficient if it was proveable upon an Issue to be taken: For which he cited *Sperry's Case*, 5 Co. 51. that in *Corbet and Barnes's Case*, 1 Cro. 320. a Battery suppos'd to be in *London*, and a Battery suppos'd to be in *Herefordshire*, were averr'd to be one and the same Battery, which naturally was impossible; but the Action being transitory, and therefore supposable to be done in any County, such an Averment was allowable. That by taking this Averment they had offer'd a fair Issue triable by a Jury, but Mr. Attorney having demurr'd, he had confess'd what they had alledg'd: If he had taken Issue, the Jury might have taken into Consideration the Libel set forth in the

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Indictment, and the Debates in the House of Commons upon it, which wou'd have prov'd the Issue that the Treason contain'd in the Impeachment was the same with that contain'd in the Indictment: That in an Action, *Quare canem mordacem defendens scienter retinuit* [*scienter*] was not directly issuable, but was proveable upon the general Issue, and so in the present Case, the Intention of the Commons, upon the Issue offer'd by them, might and wou'd have been prov'd.

As to what was objected, that a Man ought not to be put to answer so general an Accusation, he said, neither wou'd *Fitz-Harris* be put to answer without special Articles, but he cou'd not quash the Impeachment, because it was general, as he might an Indictment; therefore they must take the Impeachment as they found it, and since it stood against them as a Record, tho' 'twas general, they must plead it; and as generally, having no Way to make it no Record, as they had in Case of such a general Indictment: And that a general Impeachment, without Articles, was a Bar to any Indictment for the same Matter, had been resolv'd by all the Judges in the Case of the Lords in the Tower, (as he had been inform'd) tho' the Parliament, wherein they were impeach'd, was dissolv'd.

That in an Indictment they cou'd not plead *ante* *Foitz* arraign'd, but must plead either *ante* *Foitz* convict or acquit, *Wishpole's Case*, 1 Cro. 105. But where Articles were once exhibited on an Impeachment, there cou'd be no Proceedings upon an Indictment for the same Offence, tho' the Defendant, in the Impeachment, be neither convict or acquit.

To an Indictment
one cannot plead
ante *Foitz*, ar-
raign'd.

He observ'd how scrupulous the Judges had always been of meddling where they had any Jealousy, that either the Parliament had, or pretended to have a Jurisdiction, *That they wou'd always worship afar off, and wou'd never come near the Mount*: And concluded, that if the Court return'd this Cause, they did in Consequence charge themselves with the Blood of that Man, thro' which they must wade to come at the Cause; and whe-

ther they would come at it upon these Terms, he left it to their Consideration.

Mr. Pollexfen, in his Argument for the Prisoner, said, That as to the great Question, Whether the Allegation was not too general; it being alledg'd only that he was impeach'd in Parliament for Treason generally, and not said how or for what particular Treason, and that the Averment would not help it, He answer'd, first, that let the Crimes be never so particularly specify'd in the Record that is pleaded, yet there must be always such an Averment, and that Averment was so much the substantial Part of the Plea, that let the Matter appear never so much the same, without an Averment it would be naught: As where one pleads one Indictment for the Murder of J. S. to another Indictment for the Murder of J. S. yet he must aver that they are one and the same Person, for else *non constat* to the Court, but there may be two J. S's. As to the general Allegation, it being admitted that a general Impeachment will take away the Jurisdiction of this Court, he conceiv'd nothing could be plainer than that the Court was outed of its Jurisdiction; and as other Courts were bound to take Notice of the Proceedings in this, so this Court was bound to take Notice of the Proceedings in others: That where a Man brings an Action for Wares and Merchandizes, and not expressing the Particulars, and afterwards brings another Action specifying the Particulars, so much for Cloth, so much for Wine, &c. tho' the first Declaration be in general, not expressing what the Wares were, and the last is particular, yet may the Defendant plead, in Abatement to the second Declaration, that the first and second were for one and the same Thing: And if an Indictment for Battery be found against a Man generally, yet may a Man that is a second Time indicted, come and say this is for one and the same Thing: So here, and wherever there is as much Certainty set forth as the Case will admit, and is possible to be had, the Party is permitted to plead as he can, and help himself

Page 733.

Where an Averment shall reduce a general Allegation to a Certainty.

himself by Averment: That here was a general Impeachment, they could not make that particular which was not; they had pleaded it as it was in the Record, from which they could not vary; and they had averr'd that it was the same Matter, and it was confess'd to be so by the Demurrer; and that if the Court would meddle with Proceedings in Parliament, they must take Notice of their Method of Proceeding as they did of other Courts: That had they gone about to particularize the Treason when the Impeachment was general, the other Side would have said, *Nutiel Record*, and they should have been condemn'd for failing in their Record, but having done according to the Fact, if that Fact were such as would oust this Court of its Jurisdiction, he did not see how it was possible they should plead otherwise, or what Answer could be given to it.

That if this Impeachment was in the Nature of an Appeal, it had been agreed that an Appeal did suspend the Proceedings upon an Indictment for that Fact, as was the Case in *Dyer* 296, *Stanley* being indicted and convicted for Murder, before Judgment, the Wife brought her Appeal, and the Court would not go to Judgment upon the Indictment till the Appeal was determin'd: And in like manner this Suit ought first to have its Course and Determination, before the Indictment was proceeded upon.

Mr. Attorney. I am of Counsel for the King, and take it, this is a naughty Plea, as a Plea to your Jurisdiction, and that there is no Matter disclos'd therein that we can take a good Issue upon: They say, indeed, we have admitted that there is an Impeachment depending, that the Impeachment is for the same Matter, and that we have admitted also that the Parliament is in Being; but *no Fact is admitted that is not well pleaded*: 'Tis true, were it admitted that the Parliament is still in Being, it would go very hard with us; but if it be not so admitted, the whole Force of Mr. *Williams's* Argument falls to the Ground: And I may affirm, that the Be-

Mr Attorney answers the Arguments of the Prisoner's Council.

No Fact is admitted by a Demurrer which is not well pleaded.

The Courts of
Westminster to
take Notice of the
Prorogation and
Dissolution of
Parliaments.

ginning, Continuance, Prorogation, Adjournments, and Dissolution of Parliaments, are of publick Cognizance, and the Court will, *ex Officio*, take Notice of them, and they need not be averr'd; and so is the 41 *Eliz.* the Bishop of *Norwich's* Case.

And as for those many Cautions that have been given you, certainly, no Consideration whatever ought to put Courts of Justice out of their steady Course, but they ought to proceed according to the Law of the Land. Many Things have been offer'd to shew that a Plea, depending in a superior Court, is pleadable to the Jurisdiction of an inferior Court. Had they pleaded this in Averment, it wou'd have had its Weight, and been consider'd as in *Sperry's* Case. But put the Case this were a good Impeachment, and he had been arraign'd and acquitted upon it, if he had afterward been indicted in this Court, and wou'd not have pleaded this in Bar, but to the Jurisdiction of the Court, it wou'd not have been a good Plea, but he had lost his Advantage by Mispleading: If then an Acquittal, or Conviction, on an Impeachment, is not a good Plea to the Jurisdiction, surely an Impeachment alone, wherein nothing is done, cannot be a good Plea to the Jurisdiction. All the Cases that have been put about Matters which are not examinable in this Court, make not to the Matter in Question; as, my Lord *Hollis's*, and Sir *John Elliot's*, and the Lord *Shaftsbury's* Cases; the Fact was done out of their Jurisdiction, and that may be pleaded to the Jurisdiction; but where the Crime and the Person are absolutely within the Jurisdiction of the Court, and the Court may originally take Cognizance of it, as in the present Case, what can out the Jurisdiction less than an Act of Parliament?

As to the Case of the five Lords, I observe, that the Lords took Care that the Indictments against them shou'd be all remov'd into the House of Lords, foreseeing that the King might have proceeded upon those Indictments if they had not been remov'd thither; besides, the Lords

have

have pleaded in Parliament, where, by the Law of Parliament, all the Peers are to be their Judges, nor can they be ousted of that Right: As for the Case of 11 R. 2. that had been cited, where there was a Declaration in Parliament, That they proceeded according to the Law of Parliament, and not according to the Common Law, or the Practice of inferior Courts, in the Case of the Lords Appellants; this Proceeding was contrary to *Magna Charta*, to the Statute of *Edward 3.* and the known Privileges of the Subject: But that Proceeding had Countenance in Parliament, there being an Oath taken by all the Lords in Parliament that they would stand by the Lords Appellants, and thereupon they would not be advis'd by the Judges, but proceed to the Trying of Peers and Commoners at their Pleasure; and between that Time of 11 R. 2. and 1 H. 4. it may be observ'd what Havock they made by those illegal Proceedings; and in the 1 H. 4. it was enacted, That no more Appeals of that Nature, nor any Appeals whatever, should be any more in Parliament; so that the Gentlemen would do well to consider how they liken an Impeachment to an Appeal.

But then, as to the Form, they say that they have pleaded it to be *secundum legem & consuetudinem Parliamenti*, but they ought to have disclos'd what that Law and Custom of Parliament is; indeed, for the legislative Part, and Matters of Privilege, both Houses proceed only *secundum legem & consuetudinem Parliamenti*, but as to the judicial Part, they have always been guided by the Statutes and Laws of the Land, and have been outed of Jurisdiction in several Cases, as by 4 *Edw. 3.* and 1 *H. 4.* And the Lords, in all Writs of Error and Matters of Judgment, proceed *secundum legem terra*; for there is not one Law in *Westminster Hall* as to Matters of Judgment, and another in the Court of the Lords above.

And as to the Allegation being too general, I take the Books to be express, that when a Record is pleaded in Bar, or in Abatement, the Crimes

The Parliament in their judicial Capacity to proceed according to Law.

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If one be acquitted on a faulty Indictment he may be indicted again.

Crimes ought to be set out to appear the same, *Co. Entr.* 53. *Holdcroft's* and *Burgb's* Case, and *Watts* and *Bray's* Case, 41 and 42 *Eliz. Co. Entr.* 59. *Wrotts* and *Wiggs's* Case, 4 *Rep.* 45. and in *Lewes* and *Scholastica's* Case, and *Dives* and *Manning's* Case, the Record must be set out, that the Court might judge upon it; and the Record must not be try'd *per Pais*, but by it self. It is true, there must be an Averment, let the Matter be pleaded never so certainly; but that is for another Reason: But whether of the same Nature or not of the same Nature, must appear upon the Record pleaded, because the Court must be ascertain'd that it was sufficient for the Party to answer to it; for if it were insufficient he may be proceeded against: As where an Indictment is pleaded that is insufficient, tho' the Party pleads an Acquittal or Conviction upon it, it will not avail him, the Court will proceed on the other Indictment, as was resolv'd in *Vaux's* Case and *Wigg's* Case. This is one great Reason why it must appear, (*viz.*) That the Court may judge whether it be sufficient for the Party to answer; and now, if this be such an Impeachment, as they have pleaded it, as the Prisoner cou'd not answer unto by any Law of Parliament or other Court, then it is not sufficient to oust you of your Jurisdiction.

Matter of Fact averr'd shall not enlarge the Record.

It has been said, that in a Case of Barretry such an Averment is allowable; to which I answer, That is a certain, special, and particular Crime; but there are abundance of special Sorts of High Treason: As for that Authority cited out of the Book of Assizes, where a Man was indicted for the Murder of *J. S.* and afterwards for the Murder of *J. N.* if *J. S.* was known as well by the Name of *J. N.* as *J. S.* the Indictment was for the Murder of the same Person, and there 'twas pure Fact averr'd: But where 'tis essential, as this Case is, that the particular Treason do appear, to say that it is the same particular Treason, and that Matter of Fact averr'd shall enlarge a Record, there is no Authority for,

As

As to Mr. Wallop's Opinion, That upon this Averment the Jury may try the Fact; Shall a Jury judge upon the Debates of the House of Commons, whether it be the same Matter or no? If the Commons have never so much in particular against a Man, when they come to make good their Impeachment, they must ascertain it to be a particular Crime, and the Overt Act must be alledg'd in the Impeachment.

But that which is before your Lordship is the Point upon the Pleading, and, I take it, there is nothing before you concerning an Impeachment depending before the Parliament; whatever was done, 'tis so imperfectly pleaded that this Court can take no Notice of it.

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Mr. Solicitor. I shall not, at present, debate whether *Magna Charta* has order'd that every Man shall be try'd by his Peers; and the Statute of the 4 Edw. 3. which says, that the Lords shall not be compell'd, or have Power, to give Judgment upon a Commoner, hath secur'd the Subject from Impeachments; or whether an Impeachment depending in the House of Lords against a Commoner, by the Commons, will bar this Court of its Jurisdiction; but I shall beg Leave to observe some Things they have offer'd: They say, the House of Commons are the Grand Inquest of the Nation, and make these Presentments to the House of Lords; but the Question is, Whether this be not a Presentment for the King, for an Impeachment does not conclude as an Appeal does, but *contra ligeantia sua debitum & Coronam & Dignitatem Domini Regis*, so that it is the King's Suit; and in an Impeachment the Witnesses for the Prisoner are not sworn, nor hath the Prisoner Counsel for his Life in Matter of Fact, as in Cases of Appeal, at the Suit of the Subject, he hath: The King may pardon Part of the Sentence, it was done so in *Richard* the 2d's Time, and it was done so lately in the Lord *Stafford's* Case; but were it admitted to be in the Suit of the People, yet that cannot preclude the King from his Suit. At Common Law, before the Statute of the 3d of *Hen. 7.* tho' there

An Impeachment is the King's Suit and not the Commons.

In an Appeal the Prisoner's Witnesses are sworn, and he may have Counsels, but in an Impeachment 'tis otherwise.

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The King may
pardon one im-
peach'd.

A Conviction on
an Indictment, no
Bar to an Appeal.

The Indictments
again the five
Lords remov'd by
Certiorari into the
House of Peers.

Page 738.

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was an Appeal of Murder, the King might proceed upon the Indictment and secure that Statute. An Acquittal or Attainder upon an Indictment is no Bar to an Appeal, so that a Man is twice in Danger of his Life in that Case as well as this. But this is not like the Case of an Appeal, for tho' formerly, it was usual to stay the Suit of the King, and prefer the Suit of the Subject, it was because the Subject had the nearest Concern, as the Son in the Death of his Father; and it did most concern him to prosecute it; but in Case of an Impeachment the Treason turns quite another Way, for there is no Treason but against the King, and the King himself has the nearest Concern, the Wrong is primarily and originally to himself: The Subjects Danger is but a Consequence of that, as all Hurt to the King tends to the Hurt of his People: So the King's Suit ought to be preferr'd here as the Subjects was in the other Case of an Appeal.

And what has been done in the Case of the five Lords, seems to imply that a Tryal may be here in this Case; for if the Lords, after an Impeachment brought against the five Lords, and after special Articles exhibited against them, thought fit, notwithstanding, to remove the Indictment by *Certiorari* into Parliament, to prevent any Prosecution against them elsewhere, certainly they thought the King's Court might have proceeded unless they had so done.

As to the Form of the Plea, I conceive it is faulty; and tho' it is said, there is a Difference between this Case and that of Indictments, because it is the Course of the Parliament to impeach generally, this Reason holds rather the other Way; for if in any Case such a general Way of Pleading, with Reference to a Record, were to be admitted, it were in Case of an Indictment, because the Indictment, when brought in, would ascertain the Matter; but here, if the Record be brought in, it will no more ascertain it than the Plea does already.

Mr. Serj. *Jefferies*. As to the Case of my Lord *Shaftsbury*, which has been cited, it makes strongly

ly for us there; the Court said they wou'd not meddle with Matters depending in Parliament, because the Parliament was then in Being; but the whole Court did then declare, that had the Parliament been dissolv'd, they wou'd have said more to it.

The Cases cited by Mr. *Pollexfen* are right, no doubt, if one bring a general *Indebitatus assumpsit* for Wares sold and deliver'd, and afterwards he brings a particular *Indebitatus assumpsit* for such and such Wares, naming the Particulars, the Defendant may plead in Bar, and aver it is for the same Thing; but had there been only an Action brought, and no Declaration put in, then the Defendant cou'd not have pleaded such a Plea with such an Averment, because there was not sufficient Matter of Record set forth in the Pleading, whereby the Court might be able to give a Judgment, or put it into a Way of Tryal, whether it is for the same or not; and it is the same in this Case, here being nothing but a bare Accusation. Nor is this so dangerous a Case to determine as is pretended by the other Side: Much better wou'd it be for the Court to answer, if ever they shou'd be requir'd, That they have perform'd their Duty, and done Justice according to their Consciences and their Oaths, than to fear any Threats or Bugbears from the Bar. And how is it possible to judge whether the Prisoner is impeach'd for the same Thing, it may be for Clipping and Coining for ought appears; nor can the Intention of the House of Commons be prov'd before they come to a Resolution: The Question is not, whether an Impeachment in the House of Lords supercedes an Indictment in the King's Bench, but, whether they have pleaded it so substantially to enable the Court to judge upon the Question; and therefore we pray your Lordships Judgment that the Plea may be over ruled.

Sir *Fr. Wilkins*. Suppose in such a Case as this, after such a Plea pleaded, the Commons carry up Articles quite different, then the Plea wou'd appear to be false, and the pleading and allow-
ing

An Action brought before a Declaration put in cannot be pleaded in Bar to another Action.

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ing it an apparent Delay of Justice; and the Intention of the House of Commons can never be averr'd or try'd before they have declar'd it themselves, and I conceive the Plea to be naught for that Reason. — And farther, Treason generally alledg'd in the Impeachment is the *Genus*, and the particular Treason mention'd in the Indictment is the *Species*; now the Averment in the Plea is that the *Genus* and the *Species* are the same, which is absurd, and, if allow'd, tends only to blind the Court, instead of making the Matter plain for their Judgment; for these Reasons, and what has been already urg'd by others, I conceive this Plea ought to be over ruled.

The Court declare they should not meddle to determine whether a Commoner might be impeach'd for Treason, or whether an impeachment shou'd stay the Proceedings of an inferior Court.

L. C. J. I. must tell you, you have started several Points that are not in the Case: As, Whether the Commons can at this Day impeach a Commoner for Treason in the House of Lords; Whether an Impeachment in the Lords House (when the Lords are possess'd fully of the Impeachment) does hinder the Proceeding of an inferior Court; We have nothing to do with these Matters; but we have a Case here that arises upon the Pleadings, and whether you have brought before us a sufficient Plea to take away the Jurisdiction of the Court, as you have plead'd it, is the sole Point before us: Now, if you are able to mend your Pleading, we will not catch you; if you let us know it, we will consider of it; but if you abide by this Plea we shall take a reasonable Time to give our Judgment: As for the Cases cited concerning Facts done in Parliament, we do not assume a Jurisdiction to enquire into these Matters; for Words spoken or Faults done in the Commons House, or in the Lords, we call none in Question here which takes off most of the Instances you have given: Our Question is barely upon the Pleading, whether we have a sufficient Pleading of such an Impeachment as can foreclose the Hands of the Court; and as to that we shall deliberate well before we give our Judgment.

Then

Then *Fitz-Harris* was remanded to the Tower.

Tuesday, May the 10th, Mr. *Attorney* mov'd the Court to appoint a Day to give Judgment upon the Plea, and *Fitz-Harris* was order'd to be brought up the next Morning.

Wednesday, May the 11th, Mr. *Fitz-Harris* being brought to the Bar, Mr. *Attorney* pray'd Judgment on the Plea.

Then the Chief Justice acquainted Mr. *Fitz-Harris* that upon full Consideration and Deliberation of this Case, and upon Conference with some of the other Judges, Mr. J. *Jones*, Mr. J. *Raymond*, and himself, were of Opinion that his Plea was insufficient, but that Mr. J. *Dolben* doubted concerning it, and therefore the Court did order and award that he shou'd answer over to the Treason.

The Chief Justice, Mr. J. *Jones*, and Mr. *Raymond*, of Opinion the Plea was insufficient. Mr. J. *Dolben* doubted.

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The Court award the Prisoner shall plead over.

The Clerk of the Crown being about to arraign the Prisoner, he desir'd he might advise with his Counsel before he pleaded, but was told he cou'd have no Counsel as to Matter of Fact: Then he desir'd he might finish his Confession before he pleaded before the Chief Justice and some of the Counsel; but my Lord Chief Justice said, he had trifled with them so often that he had nothing to say to that Matter at present, and directed him to plead. Whereupon, being arraign'd by the Clerk of the Crown, he pleaded, *Not Guilty*, and put himself upon his Country. After which, Mr. *Fitz-Harris* desir'd he might have Time to send for a Witness from *Holland* before he was brought upon his Tryal, and it being demanded what he wou'd bring that Witness to prove, he said, he did not know whether it wou'd be safe for him to discover that, but he wou'd acquaint the Chief Justice with it in private.

The Prisoner pleads, *Not Guilty*.

The King's Council insisted that he might be try'd this Term, and urg'd that the Prisoner had had a whole Term's Notice to prepare for his Tryal and provide his Witnesses; but the Chief Justice thought fit to allow him Time till the next Term: For he said, having been made to depend upon his Plea, it might be a Surprize

He has Time to prepare for his Tryal till next Term.

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Page 742.

to him if he was try'd suddenly; and the Court were all of Opinion he shou'd have that Time to produce his Witnesses: And a Rule was made that his Wife and his Solicitor might come to him with his Papers, provided they were first inspected by the Lieutenant of the Tower; and *Subpœna's* for his Witnesses were order'd.

In capital Causes a Jury shall not be struck as in Civil Causes, but it must be left to the Sheriff.

Mr. Attorney mov'd, that the Sheriff might attend the Clerk of the Crown, with the Freeholder's Book, to strike a Jury, for that he was afraid there might be some Practice in this Cause, and said, that this was usual in Tryals at Bar: The Court answer'd, that might be done in Civil Causes, but they doubted it cou'd not in Criminal, and that the Course of the Court shou'd be observ'd.

Fitz-Harris brought upon his Tryal.

Then the Prisoner was carry'd back to the Tower. On *Thursday* the 9th of *June*, 33 *Car.* 2. 1681, being the first *Thursday* in *Trinity Term*, Mr. *Edward Fitz-Harris* was brought to the Court of the King's Bench, and Mr. *Thompson* mov'd, that before his Tryal he might give Evidence against Sir *John Arundel* and Sir *Richard Beiling*, concerning the Murder of Sir *E. Godfrey*, in open Court, for that there was an Attempt to prove Sir *E. Godfrey* murder'd himself.

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The Court refuses to examine the Prisoner, before his Tryal, as to the Murder of *Godfrey*.

The Chief Justice answer'd, That what he mov'd two or three Days before had some Reason in it, (*viz.*) That he might give Evidence to a Grand Jury, but there being no Grand Jury sworn, there was no Body to give Evidence to, unless he wou'd have the Court take his Examination, and afterwards give it in Evidence to the Grand Jury: Whereupon the Jury was order'd to be sworn.

A Prisoner not be allow'd to receive Papers or Instructions from his Council at his Tryal, or to have a Solicitor.

The Prisoner desir'd his Wife and his Solicitor might stand by him with his Papers; and it was granted that his Wife shou'd stand by him with such Papers as he had prepar'd for the Help of his Memory; but if she brought Papers drawn up by Counsel for him, it was not to be allowed: And as to a Solicitor, he was told, none were ever granted to a Prisoner to assist him at his Tryal in Cases of High Treason.

The

The King's Council observ'd, That the Prisoner's Wife had brought him a Copy of the Pannel, with Directions who he shou'd challenge; and said, they found three Anabaptist Preachers, and several Fanaticks, return'd upon the Jury; and insisted, that the Prisoner's Wife might be remov'd farther from him; but upon the Prisoner's returning the Papers back to her again, she was permitted to remain where she was.

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Then the Jurors were call'd: And first, Sir *Michael Heneage*, who desir'd to be excus'd because he was ill; but the Court told him, they cou'd not excuse him, if there were not enough without; and he was order'd to stand by. Major *Wildman* being call'd, said, he had voted the Impeachment against *Fitz-Harris*, and therefore he thought he ought not to serve on this Jury; but it appearing he had no Freehold in *Middlesex*, the Major was excus'd upon that Account.

Maximilian Beard being call'd, said, he was 75 Years of Age, and desir'd he might be excus'd; but 'twas said, since he was impanell'd, and had appear'd, he must serve, if there were not enough; but if he had not appear'd, he might have a Writ of Privilege for his Discharge in regard of his Age; and he ought to be put out of the Freeholders Book.

If one superannuated appears on a Jury, he must serve, but he might have had a Writ of Privilege to discharge him.

Two of the Jurors being challeng'd for the King, and Mr. *Fitz-Harris* insisting that the King's Counsel shou'd shew Cause, the Chief Justice held, that the King need not shew Cause 'till the Pannel was gone through. At length the following Gentlemen were sworn.

Thomas Johnson,
Lucy Knightly,
Edward Wilford,
Alexander Hisey,
Martin James,
John Viner,

William Withers,
William Cleare,
Thomas Goffe,
Ralph Farr,
Samuel Freebody,
John Lockier.

The Jury being sworn, were charg'd with the Prisoner, and Pen, Ink, and Paper were allow'd the Prisoner on his Request.

The Indictment
for a treasonable
Libel call'd, The
True English-man
speaking plain
English.

The Indictment sets forth, that *Edward Fitz-Harris*, [the Prisoner] the 21st of *February*, in the 33d Year of the King, at the Parish of *St. Martin's* in the *Fields* in the County of *Middlesex*, did compass and imagine to depose the King and bring him to Death, and to raise War and Rebellion within this Kingdom: And that for the Accomplishment of his said traiterous Purposes, he did, at the Time and Place aforesaid, meet and assemble with one *Edmond Everard*, and several others, and discover his said traiterous Purposes, and did incite and perswade the said *Edmond Everard* to aid and assist him therein, and offer'd him great Rewards so to do: And the Indictment farther sets forth, that the said *Edward Fitz-Harris*, the better to effect his said treasonable Imaginations and Purposes, and to incite the King's Subjects to rise as one Man, in open Rebellion against him, and depose him, did frame, and make a treasonable Libel, entitled, *The True English Man speaking plain English*. In which, among others, are the following Words: *If James (Innuendo the Duke of York, &c.) be conscious and guilty, Ch^s (Innuendo the King, &c. is so too: Believe me, both these are Brethren in Iniquity; they are in Confederacy with the Pope and French, to introduce Popery and Arbitrary Government, as their Actions demonstrate. The Parliament's Magna Charta, and the Liberty of the Subjects are heavy Yokes they'd willingly cast off, to make themselves as absolute as their Brother of France. And, if this can be prov'd to be their Aim and main Endeavour, why shou'd not every true Briton be a Quaker thus far, and let the English Spirit be up, and move us all, as one Man, to Self-Defence; nay, and if need be, to open Action, and sling off these intolerable Riders: And in another Place, are these Words's J. and C. (meaning the Duke and King) both Brethren in Iniquity, corrupt both in Root and Branch, as you have seen they study but to enslave you to a Romish and Frenchlike Yoke: Is it not plain? Have you not Eyes, Sense, or Feeling? Where is that old English noble Spirit? Are*

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you become French *Asses*, to suffer any Load to be laid upon you? And if you can get no Remedy from this next Parliament, as certainly you will not, and that the K. repents not, complies not with their Advice, then up all as one Man. O! Brave English-Men, look to your own Defence e'er it be too late! Rouse up your Spirits! And in another Place he says, I will only add, that as it is the undoubted Right of Parliaments to make a Law against a Popish Successor, who would prove destructive to our Laws and Liberties, so it is their undoubted Rights to dethrone any Possessor that follows evil Counsellors to the Destruction of our Government: (In another Place) Then let all be ready! Then let the City of London stand by the Parliament, with Offers of any Money for maintaining their Liberties and Religion in any extrem Way, if Parliamentary Courses be not comply'd with by the King. All which is said to be against the Duty of his Allegiance, the King's Peace, his Crown and Dignity, &c.

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M. Heath open'd the Indictment, and Mr. Attorney open'd the Nature and Course of the Evidence; after which the King's Witnesses were call'd: And first,

Mr. Everard was sworn.

He depos'd, That he came acquainted with the Prisoner, *Fitz-Harris*, in the French Service Abroad; that renewing their Acquaintance here in England about February last, and discoursing of the Sufferings and Disadvantages the Deponent lay under, by adhering to the Protestant Interest, the Prisoner told him, if he would reingratiate himself in the French and Popish Interest, there was an Opportunity in his Hands, wherein the Deponent might be serviceable to himself and others; and the Prisoner said; there were several Parliament Men, and others, that did adhere to the French Interest; and gave the French Ambassador an Account of every Day's Proceedings: That as the Deponent was suppos'd to be the Author of a Pamphlet call'd, *An Answer to the King's Declaration, concerning the Duke of Monmouth*. He shou'd write such another, reflecting on the King, in order to alienate the King from his People and his People from him: And that on Monday the 21st of

Everard's Evidence of Fitz-Harris's coming to his Chamber in Gray's Inn, and giving him Instructions to write the Libel.

Page 748.

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February,

February, the Prisoner came to the Deponent, and gave him some Heads and Instructions towards forming the Pamphlet: That as soon as the Prisoner was gone, the Deponent met Mr. Savile, and told him what had been propos'd to him; and they went into the City, and acquainted one Mr. Crew with it, and desir'd he wou'd be at their next Meeting, where he might be conceal'd, and overhear what pass'd; but Mr. Crew understanding the Prisoner often spoke in French, thought himself not Master enough of the French Tongue to understand the Conversation, declin'd it; and Mr. Savile and the Deponent went and propos'd the same Thing to Mr. Smith and Sir William Waller, who both promis'd to come to the Deponent's Chamber at Grey's Inn, at Two a-Clock the next Day; and accordingly Mr. Smith came, (but Sir William did not, to the first Meeting) and the Deponent plac'd him in a Closet, where he might hear and see all that pass'd, thro' the Hangings: That when Mr. Fitz-Harris came to the Deponent's Chamber, he ask'd the Deponent what he had done in the Matter, and the Deponent shew'd him something he had drawn up, which Fitz-Harris approv'd; but he said, he must add something more, and proceeded to give the Deponent farther Instructions; and he enter'd them in his Table-Book. Then Fitz-Harris ask'd when the Scheme wou'd be ready, and the Deponent directed him to come again the next Day; and the Deponent sent to Sir William Waller not to fail to be there, and Sir William came, and was conceal'd in a Place where he might see and hear all that pass'd undiscov'rd; but before this, the Deponent shew'd Sir William two Copies of Instructions both the same, which he desir'd Sir William to countermark, that he might know them again, which he did: A little after Sir William was plac'd, Fitz-Harris came in, and the Deponent gave him one of the Copies of the Pamphlet, which he read, and the Deponent read the other; and Fitz-Harris added some Things, and struck out others; and told the Deponent, it must be copy'd over fair, because it was not fit for the French Ambassador's Confessor to read, who was to present

present it to the Ambassador: That the Deponent said, it shou'd be done; but added, these were very treasonable Things; and *Fitz-Harris* answer'd, 'The more treasonable the better; it wou'd set the People together by the Ears, and keep them clashing and mistrusting one another, while the French King shou'd gain *Flanders*, and then he wou'd make no Bones of getting *England* too: That he bid the Deponent not be discourag'd at the Danger, for when this was done he shou'd have forty Guineas, and a Pension afterwards of some thousand Crowns; for his Master, the French King, was not such a Niggard as the Spaniard; and that after some farther Instructions Mr. *Fitz-Harris* left him.

Fitz-Harris. Were you not put upon this, to trapan other People?

Everard. I was put upon it by no body but *Fitz-Harris*, to whom I was to deliver it, and he was to give it to the French Ambassador's Confessor, and it was to be drawn up in the Name of the Non-conformists, and put upon them.

Fitz-Harris. Is this the same Libel that was read in the House of Commons, upon which I was impeach'd?

Everard. Yes, I believe it was.

Mr. Jones. Did any Body else assist you in drawing the Libel?

Everard. There is at the latter End a Paragraph taken out of a scandalous Libel handed about, and something more out of another, entitled, *The Character of a Popish Successor*, in which *Fitz-Harris* said, there were many Things material; and I copy'd some of the Queries in the Paper call'd, *A Letter intercepted to Roger L'Estrange*.

Mr. Johnson. Did *Fitz-Harris* name the Parliament-Men who concurr'd with the French Ambassador in this Design?

Everard. No, he said I shou'd know them hereafter.

Mr. Smith was sworn,

He depos'd, that on the 21st or 22d of February, Mr. *Everard* and Mr. *Savile* came to him, and told him of the Design of this Irish Officer, (*Fitz-Harris*)

Smith's Evidence of his being conceal'd in Mr. *Everard's* Chamber, and over-hearing the Instructions the Prisoner gave Mr. *Everard*.

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Harris) to publish a treasonable Libel ; and that the Deponent agreed with them to go to Mr. *Everard's*, and lie conceal'd, as is before depos'd ; and that they met with Sir *William Waller*, and he also engag'd to come to Mr. *Everard's* Chamber : That the next Night Sir *William Waller* not coming, the Deponent went into Mr. *Everard's* Closet himself, and soon after *Fitz-Harris* came ; and, after some little Discourse of the Matter between *Everard* and *Fitz-Harris*, Mr. *Everard* fetch'd a Piece of Paper of about half a Sheet, and read it to *Fitz-Harris* ; and *Fitz-Harris* said, there must something be added to it, and mention'd several Heads : He told him, he shou'd represent the King as a Papist ; and that it might be demonstrated by several Instances ; As first, His espousing the Duke of *York's* Interest, and preferring his Creatures by Sea and Land, some of whom were known Papists : That it might be deduc'd also from that Act which the King procur'd, That it shou'd be Treason to call him Papist, which he did, that he might the more easily introduce Popery ; He directed Mr. *Everard* also, to charge King *Charles* the First with promoting the *Irish* Rebellion, and *Charles* the Second with furthering of it : That the *Oxford* Parliament was but a Sham, and such a King was not to be trusted with the Lives, Liberties, or Religion of a People, but the People ought to provide for themselves, and blow the Trumpet boldly ; and as it was the People's Right to make Laws, and oppose a Popish Successor, so they might also depose a Popish Possessor : And he told Mr. *Everard* he shou'd get an Interest in the Common-Council, and procure them to address the Parliament, and promise to stand by them, with their Lives and Fortunes, against Popery and Arbitrary Power ; and that if Parliamentary Ways fail'd they wou'd assist them another Way ; and if the King hinder'd the Duke of *York's* coming to a Tryal, they wou'd take other Courses, &c. That Mr. *Everard* said, He wou'd do as he directed, but he was in great Danger ; and *Fitz-Harris* answer'd, So am I, and a great many more ; and mention'd something of a Reward,

ward, but the Deponent did not remember what; that on Mr. *Everard's* saying they were treasonable Things, Mr. *Fitz-Harris* answer'd, The more Treason the better; and the Substance of the whole was, That the King and People shou'd be set at Variance, that the *French* King might fall upon *Flanders* and *Holland*, and afterwards 'twas said, he wou'd make no Bones of *England*.

Sir *William Waller* was sworn.

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He depos'd, That on the 22d or 23d of February last Mr. *Everard* came to him and told him that Mr. *Fitz-Harris* had been several Times with him to engage him in a Business that, in all likelihood, wou'd put *England* in Confusion, and render the King very odious to his Subjects; and that he press'd the Deponent to assist him in making a full Discovery of it: That the Deponent did not go to the first Meeting at Mr. *Everard's* Chamber, being willing to hear how the Business went on, and if it was likely to come to any Thing before he engag'd in it: But Mr. *Everard* sending him a Letter of what had happen'd at the first Meeting, and pressing him, as he tender'd the Welfare of the Government, that he wou'd be at his Chamber the next Day, the Deponent came, and Mr. *Everard* shew'd him two Papers on which he made a private Mark, and being plac'd where he cou'd observe what pass'd, Mr. *Fitz-Harris* came in.

Sir W. Waller's Evidence of his being conceal'd in *Everard's* Chamber, and overhearing the Instructions the Prisoner gave *Everard* to frame the Libel.

[Here the King's Counsel complain'd that Mr. *Whittacre*, who was assign'd Solicitor to Mr. *Harris*, furnish'd him with Papers towards his Defence, which they said was more than a Solicitor ought to do; but it appearing to be only the Resolution of the House of Commons, Sir *William* proceeded in his Evidence.]

He depos'd, That Mr. *Fitz-Harris* first ask'd if Mr. *Everard* had finish'd the Paper according to some Instructions he had given him, and Mr. *Everard* produc'd two Papers, the one a Counter-Part of the other, and Mr. *Everard* read one and gave the other to Mr. *Fitz-Harris* to look upon, and he ask'd Mr. *Fitz-Harris* whether it was agreeable to his Instructions, and *Fitz-Harris*

Page 753.

answer'd, yes; and Mr. *Everard* saying the Thing was of dangerous Consequence, and demanding what Reward he was to have for running so great a Hazard, Mr. *Harris* reply'd, he ran an equal Hazard; and *Fitz-Harris* made several Alterations in the Papers, and, as soon as he was gone, the Deponent came out of the Place where he had been conceal'd, and observ'd the Ink was hardly dry on the Papers that were alter'd. [here the Papers which Sir *William* had mark'd were shewn him, and he attested that they were the same.] Sir *William* added, that *Fitz-Harris* told Mr. *Everard* he shou'd be prefer'd, and be paid a Pension of 3000*l.* by the French Ambassador; and that they had employ'd a great many more in Businesss of this Nature, to create Misunderstandings between the King and his People, by which Means the French King would have an Opportunity of over-running *Flanders*, &c. and then *England* would become an easy Morfel.

Fitz-Harris. Do you believe I had any treasonable Design in this?

Sir *W. Waller*. I can say nothing to that, I only speak to Matter of Fact.

Fitz-Harris. Is this the same Paper for which I was impeach'd by the Parliament?

Sir *W. Waller*. Yes, 'tis a Copy of it, I read it in the House, and as soon as I had made my Report in the House of these treasonable Transactions, they immediately proceeded to the Impeachment.

Mr. Solicitor. That this Libel was spoken of in the House of Commons is true, but it does not appear upon the Impeachment that he was impeach'd upon that Libel.

Mr. *Fitz-Harris*. Had not Sir *William Waller* a Design to trepan me in this Matter; for I always look'd upon him as my Enemy?

Sir *W. Waller*. No, Mr. *Fitz-Harris*, indeed, not I.

Serj. *Jefferies*. Have you known Mr. *Fitz-Harris* before; what Religion is he of?

Sir *W.*

Sir W. Waller. I have known him many Years; he was always reputed a Roman Catholick.

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[Here the whole Libel was read to the Jury, and they compar'd the Words in the Indictment with those in the Libel, and examin'd, if they bore the same Sense in the Indictment as they did in the Libel, as they were connected there with other Words.]

L. C. J. Gentlemen, you have heard it read, and may observe, there is nothing in the Libel that can extenuate or mitigate the Clauses laid in the Indictment, but abundance to make them more horrid and exceedingly aggravated.

Then Sir Phil. Lloyd and Mr. Bridgman were sworn, and depos'd; That Part of the Instructions which Mr. Fitz-Harris gave to Mr. Everard in Writing Fitz-Harris acknowledg'd to be his Hand-Writing.

Clerk reads the Instructions: *After this Sham Meeting of the Parliament, &c.*

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L. C. J. When were these Instructions given you, Mr. Everard?

Everard. In February, either on the Monday or Tuesday.

L. C. J. If you have any thing to say in your Defence, Mr. Fitz-Harris, this is your Time.

Fitz-Harris. I desire Mr. Otes may be call'd.

Fitz-Harris's Defence.

Mr. Otes appear'd.

Fitz-Harris. Pray, Doctor, what have you heard Mr. Everard say about this Libel since I was taken.

Otes. Having heard of the Discovery Mr. Everard and Sir William had made, I did discourse with Mr. Everard about it, and he told me he wrote the Libel, and when I seem'd to disbelieve it the Man was angry with me; I told him he spoke but badly, and Everard reply'd, tho' he was unfortunate in his Tongue, he was fortunate in his Pen, and that he took a great deal out of the intercepted Letter to Sir Roger L'Estrange; and asking what the Design of the Book was, he said, it was to be sent by the Penny-Post to the protesting Lords and the leading Men in the House of Commons, that they

That the Libel was to be convey'd into Whigg's Pockets, and that the King had a Hand in it.

might

might be taken up, and search'd, and have it found upon them: He told me also, that the Court had a Hand in it, and the King had given *Fitz-Harris* Money already, and would give him more if he had Success.

Mr. Sheriff Cornish appear'd.

Fitz-Harris. Pray, *Mr. Sheriff*, declare what the King said to you when you went from me in *Newgate*, and acquainted his Majesty I would make a Discovery.

Cornish. I desire your Lordship's Opinion, whether it be decent for a Subject to declare what Discourse his Prince is pleas'd to have with him.

L. C. J. If you have any Evidence give it: We are not to direct you, Sir.

Cornish. My Lord, when I acquainted his Majesty that the Prisoner was inclin'd to make a Discovery, his Majesty said, he had often had him before him and his Secretaries and cou'd discover nothing from him; and his Majesty added, That about three Months before the Prisoner pretended he was in Pursuit of a Plot relating to his Majesty and the Government, and that the Prisoner having made great Protestations of Zeal for his Service, he did countenance him and give him Money.

Mr. Attorney. Did the King say he saw him before he was arrested for this Fact?

Cornish. Yes, his Majesty said the Prisoner came to him about three Months before, and pretended he wou'd discover a great Plot.

Col. Mansel was call'd.

Fitz-Harris. What did you hear *Sir William Waller* say after this Discovery?

Col. Mansel's Evidence that the King said, this Discovery had broke all his Measures.

Col. Mansel. I was at the *Dog Tavern* with *Sir William Waller* and some other Company, and *Sir William* was giving an Account of this Business: And *Sir William* said, when he acquainted the King with the Discovery, his Majesty told him he had done him the greatest Piece of Service that ever he had done him in his Life, and gave *Sir William* a great many Thanks: But that soon after he left the King, two worthy Gentlemen

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Gentlemen told him, [Sir William] that the King said, he had broken all his Measures, and he would have him [Sir William] taken off one Way or another.

Fitz-Harris. Did he say it was design'd to put the Libel upon the Protestant Lords and the House of Commons?

Col. *Mansel.* There was that said.

L. C. J. What was said? Don't come with your imperfect Discourses here.

Col. *Mansel.* Sir William Waller said, that the Design was against the Protestant Party.

Mr. Attorney. So say we.

Mr. *Hunt* appear'd.

He Depos'd, That he was then at the *Dog Tavern* too, and Sir William Waller, after he had read the Libel to the Company, did tell them that the King gave him particular Thanks for his Service in detecting *Fitz-Harris*; but that two Gentlemen of undoubted Credit told him afterwards, that the King was in a great Passion, and bestow'd hard Names upon him, and said, he would give any Thing to take him out of the World; that he [Sir William] was an unsufferable Vexation to him, and had broken all his Measures; and that Sir William said the same in the Presence of *Ph. Harecourt* and others, at *Oxford*. And Sir William said, it was contriv'd to put these Papers into the Hands of People, to make them Evidences of Rebellion, and said, there was another Plot which he had trac'd near to a full Discovery, a more horrid Plot than this or *Dangerfield's*.

Mr. Sheriff *Buttel* appear'd.

He depos'd, That Mr. *Everard* told him he wrote the Libel himself, and said, that *Everard* prefer'd a groundless Information against him for Treason, at the Instigation of an Enemy of the Deponent's.

Mrs. *Wall* was call'd.

Fitz-Harris. Pray acquaint the Court if I have not convey'd treasonable Papers to the King, by your Means, and if I had not 250*l.* upon that Account, about *Christmas* last was Twelve-Month, when

The Prisoner calls Witnesses to shew he had Money of the King for secret Service.

when I gave you the Libel about the King and your Lady.

Page 757.

Mrs. Wall. There was 150*l.* 200*l.* or 250*l.* paid him, but not for a Libel; he was a Kinsman of mine, and I took him for an honest Man, and was willing to do him what Kindness I could, and his Family having suffer'd much for the King; and Mr. *Fitz-Harris* telling me he cou'd bring over some considerable People to the King's Interest, I spoke to the Secretaries of State and to the Dutcheſs of *Portsmouth* for him, and in about six Months Time I did get him the Money he mentions.

[Here Mrs. Wall produc'd a Petition of Mrs. *Fitz-Harris*'s for a Quit-Rent that belong'd to her in *Ireland*.]

Fitz-Harris. When were these Papers given you; did I give 'em you?

Mrs. Wall. You or your Wife did.

Fitz-Harris. Did not I come to you the *Wednesday* before I was taken, and told you I desir'd to speak with the King, and that I had a Libel to present him?

Mrs. Wall. You came the *Thursday* before you was taken, about Nine at Night, and said, if you might see the King you believ'd you cou'd do him Service, but mention'd no Libel as I have a Soul to be sav'd.

Fitz-Harris. Did not you say my Lord *Sunderland* was gone, and you cou'd not so easily do Business with the King now he was gone.

Mr. Attorney. Was not he a Roman Catholic?

Mrs. Wall. Yes, and upon that account we said it was dangerous to let him go near the King.

Mr. Attorney. Do you know he was ever admitted to the King?

Mrs. Wall. Never; he has, indeed, been with me in a Room when the King pass'd by, but the King never took any Notice of him, or spoke with him by any Means; nor did the King or the Dutcheſs of *Portsmouth* give him any other Money than I have mention'd.

L. C. J.

L.C.J. Upon what Account was that Money paid?

Mr. Wall. My Lord, since you press me, it was for bringing in the Lord *Howard* of *Esrick*, it was that and his Poverty together.

Mr. Serj. *Jefferies*. What Character did he give *Howard* when he discours'd of him?

Mrs. Wall. He said he was an honest Man, and ask'd if I would be acquainted with him, I told him, No: He was an Informer and had a knavish Reputation.

Fitz-Harris. Did not I speak to the King in the outer Room, and did not you get me to make a Stand there?

Mrs. Wall. Don't make me tell that Thing, you did desire me to tell the Duke that you would first bring my Lord *Howard* to him and then to the King, and I spoke to the Duke, and he said you were a Rascal, and he would not meddle with you.

Fitz-Harris. Did not my Lady *Portsmouth* tell me the Duke was angry: I appeal to my Lord *Howard* if he did not speak to my Lady *Portsmouth* about Money for me?

Lord *Howard*. I did so.

Mrs. Wall. My Lord did second my Lady to get you some Charity.

[Here Mrs. *Fitz-Harris's* Petition and the King's Letter to the Duke of *Ormond* was read, about a Pension in *Ireland*.]

Mr. *Cowling* was call'd.

He depos'd, That Mrs. Wall told him that Mr. *Fitz-Harris* came to her two or three Nights before he was taken up, and would have had Admission to the King, and she would have had him write down what he had to say, which he would not, and she refus'd to get him Admission, and said, her Blood chill'd, for she was afraid he was come to the King for some Mischief.

Lord *Howard* appear'd.

Fitz-Harris. I desire your Lordship would acquaint the Court what the Lady *Portsmouth* said to you concerning me at your Coming thither, and if I did not introduce your Lordship.

Lord

Lord Howard's Evidence of his being introduc'd to the Dutchess of Portsmouth and the King by the Prisoner's Means.

Page 759.

Lord Howard. Sir, In the Beginning of October last, about a Fortnight before the Sitting of the Parliament, you apply'd your self to me in the Name of the King, that I wou'd give my self the Honour of waiting on his Majesty, but I declin'd it, as having nothing worthy the offering his Majesty, and because I apprehended it might be the Occasion of some Indecency, for that I might be put upon declaring my self in some of my Sentiments contrary to his Majesty's, and I did peremptorily deny to go: Then you desir'd only that I wou'd wait on the Dutchess of Portsmouth, who wou'd be a good Instrument to the King in perswading him to a good Opinion of the approaching Parliament, and you said, you cou'd assure me she was in the same Interest I look'd towards, and that she was no Friend to the Duke of York: After much Intreaty I was prevail'd with to do my self that Honour to wait on my Lady Dutchess, but I was surpriz'd with a greater Honour of finding the King there; but I am afraid, if this 250*l*. was given for bringing me thither, his Majesty does not think he deserv'd it at this Time: About ten Days after this I had another Opportunity of seeing his Majesty, by Mr. Fitz-Harris's Means, which is the last Time I had the Honour to see the King but in publick: After the Parliament was ended I confess I did wait on the Dutchess of Portsmouth, and tell her I was sensible she had endeavour'd as much as lay in her to perswade the King to a good Opinion of the Parliament, and to give them a Time of Sitting, and an Opportunity of explaining their Intentions for his Service; and when I parted from her, I did make it my humble Request to her that she wou'd be pleas'd to represent your Condition to the King, since, by your Means, I had the Honour to be shew'd the Way to her Grace's Lodgings.

Fitz-Harris. Did not I come to you with a Message that Night, before my Lord Stafford was condemn'd?

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Lord *Howard*. You did, and told me, as a Secret, that you brought it at the Desire of the King, and said, it was what he would take as a great Instance of my Resignation to his Pleasure, and I might promise my self all the Kindness a Prince could shew to his Subjects, if I would go the next Day and give my Vote for the Lord *Stafford*: I told you I had all the Obligations of Blood and Nature to dispose me to favour the Lord *Stafford* as far as could consist with the Integrity of a Judge; but tho' I was wavering in my Thoughts before, now, by the Grace of God, I would go, tho' I was carry'd on Mens Backs, to the House. I said, I see 'tis the Concern of the Protestant Cause, and if all the Relations I have were melted down into my Lord *Stafford*, if I had but Breath enough to pronounce his Doom, he shall die.

Otes. I desire I may go away; the Crowd is so great I cannot stand.

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Mr. Attorney. It may be Part of the Popish Plot to keep Dr. *Otes* here to kill him in the Crowd.

Earl of *Arran* appear'd.

Fitz-Harris. Did not I shew you this Libel the Sunday I was taken?

E. of *Arran*. You did shew me a Libel, but whether this or no I can't say: I took him for an honest Man, he is of a good Family, and I happen'd to be at Dinner with him the Day he was taken, and he pull'd out some Papers; I told him he would do himself a Mischief with such Papers; and after we had drank a Bottle we parted: Soon after I came Home I heard he was seiz'd.

Fitz-Harris. Then your Lordship did not read the Paper?

E. of *Arran*. No, indeed, not I.

Fitz-Harris. Did not I tell you I had a Promise of a Quit-Rent for secret Service?

E. of *Arran*. I don't know what he told me of a Quit-Rent particularly, but my Business that Day was, to serve him about the Reversion of a Pension he had in the Right of his Wife,

The *TRIAL* of

Wife, and I thought he well deserv'd it. I am sorry to see his Father's Son, as the Phrase is in *Ireland*, accus'd of such a Crime.

Mr. Attorney. Was he ever employ'd by the *French King*, or the *French Ambassador's Confessor*?

E. of *Arran*. Never as I heard of; I thought him the loyalist of any of his Religion: He own'd himself a Papist, and we have had some Disputes about it.

Mr. Secretary *Jenkins* appear'd.

Fitz-Harris. I desire your Honour to acquaint the Court what the King said of me: Did not he own he had employ'd me.

Mr. J. *Jenkins*. The King conjur'd him to declare who the Author of the Libel was, but I don't remember the King ever own'd he had made Use of him.

Fitz-Harris. My Lord *Conway*, don't you remember it?

E. of *Conway*. No, upon my Honour; but I have heard him say he formerly employ'd you in some trifling Things.

Fitz-Harris. Did not the King declare in Council I had got Money of him?

E. of *Conway*. That was for my Lord *Howard* of *Escricks* Business.

Mr. Serj. *Jefferies*. Did you hear the King declare when he first spoke with him?

E. of *Conway*. He was taken up the 27th, and the King never spoke with him till the 28th.

Fitz-Harris. Did not you tell me, Mrs. *Wall*, that if the King put himself upon the Parliament they would use him as his Father was used.

Mrs. *Wall*. No; you promis'd to bring in my Lord *Howard*, but they found themselves much mistaken in what was promis'd he would do when he came in.

Mr. *Bullstrode* appear'd.

Fitz-Harris. What Message did you bring from the King to my Wife.

Mr. *Bullstrode*. Mrs. *Harris*, soon after her Husband was confin'd, deliver'd a Petition to the King

King in the Park, and the King gave it me, and bid me carry it to the Secretary of State: I told the King Mrs. *Fitz-Harris* was very importunate, and desir'd some Answer; the King then said, if she had a Mind to petition the Council she might, he wou'd not meddle or make with it; and I told her nothing cou'd do her Husband any Service unless he wou'd discover the Author, and she said, if the King wou'd but let her speak with her Husband she was sure she cou'd do his Majesty Service, and prevail with her Husband to discover the Author; and the King order'd some of the Council to examine her: But she said, if she might not speak with the King alone, she wou'd not speak a Word, or be examin'd.

Fitz-Harris. Pray, Mr. *Peacock*, what did Mr. *Bulstrode* say?

L. C. J. You must not ask one what another said, 'tis no Evidence; Mr. *Bulstrode* is here, ask him himself.

A Witness shall not be ask'd what another has said.

Richard Perrot, the Foot-Man, was call'd.

Fitz-Harris. How long is it since you brought me the Money from my Lady *Portsmouth*?

Perrot. I never brought any.

Lady Dutchess of *Portsmouth* appear'd.

Fitz-Harris. I wou'd know of your Grace if I was not employ'd to bring several Papers to the King, particularly the Impeachment against your Grace, and if your Grace did not tell me it was a great Piece of Service to bring such Papers, and if I could find out Men serviceable for that Purpose I shou'd do the King good Service; and if I did not tell your Grace I knew one *Everard*, who knew all the Clubs in the City, and cou'd tell the Designs of my Lord *Shaftsbury* and all that Party, and if your Grace did not encourage me to go on, and by your Grace's Means I came to speak with the King about it.

Lady Dutchess of *Portsmouth*'s Evidence.

Lady Dutchess. I was not concern'd in any Sort of Business with him, only he desir'd me to give a Petition to the King to get his Estate in

Ireland, and I did, three or four Times, speak to the King about it.

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Fitz-Harris. Had your Grace never any Papers from me; not that of the Impeachment?

Lady Dutcheffs. No.

Fitz-Harris. On what Account then had I the Money I receiv'd?

Lady Dutcheffs. For Charity.

Fitz-Harris. I am sorry your Grace is so much under the Influence of *Mrs. Wall*.

Lady Dutcheffs. I come not here to wrangle with you *Mr. Fitz-Harris*.

Fitz-Harris. Have I had any Money of your Grace since you knew my Lord *Howard*?

Lady Dutcheffs. Never; but that for Charity: If I could do you Good I would, but I don't see how I can be farther serviceable to you. [Then her Grace went away.]

L. C. J. Well, have you any thing farther to say?

Fitz-Harris. My Lord, I cannot forbear complaining of the hard Usage I have receiv'd; greater Oppression has not been before; others have had all the Liberty they could desire to enable them to make their Defence, which has been deny'd me; I have been a close Prisoner, had no manner of Help, or any thing allow'd me to refresh my Memory; and tho' my Lady *Portsmouth*, *Mrs. Wall*, and the rest, are pleas'd to say I was not employ'd or receiv'd Money for secret Services, it is well known I did so: And tho' *Mr. Everard* would make a *French* Story of it now, he knows 'tis otherwise: He told me he was well acquainted with my Lord *Shaftsbury* and my Lord *Howard*, and knew all their Clubs and Intrigues in the City, and I said, it would be of the greatest Consequence that could be if he would continue his Discoveries: I never was in the *French* Interest, tho' I humour'd his Discourse, that he might reduce the Paper he accuses me of under some Heads, and I no sooner had it but I brought it to *White-Hall*; and whereas he says he was to have forty Guineas, it was but forty Shillings he desir'd in Regard

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gard of his Poverty: When I came to *White-Hall* I shew'd the Paper to a Gentleman who was to have given it to my Lord *Clarendon*, but before my Lord had it I was taken up. What I did was with an Intention to serve the King, in discovering the Designs against him, as I was employ'd, tho' both the Secretaries are so unkind as not to declare it: I am not asham'd to speak it tho' my Life be lost upon it; and I hope the Jury will consider these are great Persons I have to do with, and in Matters of State it is hard to get any Thing out of them but what is for their Advantage, and so I am left in a sad Condition. And I must insist upon it, that if the Gentlemen of the Jury bring me in Guilty, they shed my Blood and overthrow the Law and Course of Parliament. My Lord, I have a Copy of the Impeachment, and Votes of the House of Commons, which I desire I may deliver to the Jury.

L. C. J. No, that cannot be.

Fitz-Harris. I was impeach'd by the House of Commons for this very Thing, of which I desire the Jury wou'd take Notice.

Mr. Serj. *Jefferies*. Therefore you are not guilty; is that the Consequence?

Then Mr. Solicitor and Mr. Serjeant *Jefferies* having summ'd up the Evidence for the King, the Lord Chief Justice directed the Jury.

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Page 765.

The Chief Justice told the Jury there was no doubt but the Libel contain'd treasonable Matter; that a more virulent and villainous Book was never written; that it tended to defame the King and his Ancestors, to blast all that come after him, and incite the People to Sedition and Rebellion; that this was a Piece of Art of the Jesuits which exceeded all they had done before, and they had found an apt Instrument, an *Irish* Papist, one who had been continually concern'd with them in several Plots and Papers of this Nature: And that the Evidence was as strong against the Prisoner as ever was given against a Traitor: That it did appear by the Prisoner's Witnesses, the King had given him Money in

The Chief Justice directs the Jury:

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Charity, and the Prisoner insinuated, by Way of Defence, that the King gave it him to trepan his Subjects; and that this was another Piece of Virulency of the Papists, to give an ill Interpretation to his Majesty's best Actions; nor could it be thought the King was in a Design to blacken his own Family for ever, and to stir up his Subjects against himself, to endanger his Crown and all that he had in the World, and for which no colourable Design could be imagin'd: That this was to wrest the King's Charity and Generosity to such Purposes as few Men would have had the Forehead to have done. — That as for the Impeachment of the House of Commons which Mr. Fitz-Harris had so much insisted upon, that Matter had been pleaded to the Jurisdiction of the Court, and was now over, and that they were to have no Consideration of it now; that they were sworn but to one Point, (*viz.*) Whether the Prisoner was guilty of this Treason or not; as to the Authority of the Court, that was a Question proper for the Court, and they had determin'd it, and the Prisoner talk'd fondly concerning his Blood lying at their Doors, and he thought such Insinuations would not weigh with Men of any Understanding.

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The Jury doubt whether they may legally give a Verdict, the Prisoner being impeach'd for the same Crime.

Johnson, the Fore-Man. My Lord, there is a Vote of the Commons, which says, he shall not be try'd by an inferior Court; now we take upon our selves to be Judges of this Man, it is the Office of the Jury to acquit or condemn him according to the Evidence, now if we should acquit him in this Case, what Assurance have we he shall be acquitted, we shall but fore-judge a Parliamentary Cause; therefore I don't know how far we are compellable by Law to give a Verdict in this Case upon him.

L. C. J. As to the Jurisdiction of the Court, that is not at all before you; and as to the Vote of the House of Commons, if any such there be, that cannot alter the Laws of the Land, or justify any of us in departing from our Duties, any more than a Letter or Mandate from

A Vote of the House of Commons cannot alter or suspend the Law.

from the Prince; we are to take no more Notice of one than the other. We are upon our Oaths to do Justice according to the Law of the Land, you likewise are upon your Oaths, and sworn to do Justice in your Sphere, and no Man that understands the Constitution will assert that a Vote of the House of Commons can alter the Law: Besides, Gentlemen, this Doubt was mov'd to us by the Grand Jury, and to take away all Scruple, all the Judges of England debated the Matter, and it was our unanimous Opinion we had a Jurisdiction to try this Man.

Mr. J. Jones. We have all of us a great Reverence for the House of Commons, but as my Lord has told you, so I tell you my Opinion, that a Vote of the House of Commons does not in the least alter the Law; for if it did the House of Commons must have a Legislative Power; and were Mr. Fitz-Harris to be acquitted here, and afterwards shou'd be question'd in Parliament, he wou'd say he had been upon his Tryal by his Peers, and had been acquitted by his Peers upon solemn Evidence: Your Office is to be Jurors and not Judges, your Commission is your Oath, and if you can say he is not guilty, let it lie upon your Consciences, the Danger of the King's Blood and Life be upon you.

Mr. J. Dolben. If there were any thing in what you have said, it concerns us that are Judges, and not you at all, for 'tis a Matter of Jurisdiction: You have sworn to try this Matter and give a true Verdict, and do you now scruple whether you shall give any Verdict or no; wou'd you acquit him after such an Evidence as has been given? There must be something more in it than for the Sake of such an unreasonable Scruple.

Mr. J. Raymond. I am of the same Opinion, truly.

Mr. Johnson. I cou'd not tell what I was to be sworn to; I cou'd not know what the Matter wou'd be that wou'd come before us, and

therefore took the Liberty to make the Motion now.

Mr. Fitz-Harris
convicted.

L. C. J. We are ready to give all the Satisfaction we can, and therefore have given a fair Answer to it.

Then the Jury having withdrawn for half an Hour, brought the Prisoner in *Guilty*.

Mr. Attorney then mov'd for Judgment, but the Court bid him move it another Day.

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June 15, 1681, Mr. *Fitz-Harris* was brought to the Bar to receive Sentence, he desir'd Transportation; but the Court told him, they could do nothing in that; and the Chief Justice having shewn the aggravating Circumstances the Prisoner's Crime was attended with, he proceeded to pronounce Judgment on him as a Traytor.

Judgment pass'd.

Writs issu'd to the
Lieutenant of the
Tower, and the
Sheriff, for his
Execution.

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June 22 there issu'd a Writ out of the King's Bench to the Lieutenant of the Tower, reciting the Judgment, and commanding the Lieutenant to deliver the Prisoner to the Sheriff of *Middlesex* the 1st of *July* following; and another Writ to the Sheriff, to receive him, and cause him to be executed according to the Sentence: And the Prisoner was executed accordingly at *Tyburne*.

He is executed.

The TRIAL of Dr. OLIVER PLUNKET, Titular Primate of Ireland, in Trinity Term the 8th of June, 33 Car. 2. 1681, at the King's Bench Bar, for High Treason committed in Ireland.

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The Doctor's Arraignment.

Arraign'd before
in Ireland.

Treason committed
in Ireland
may be try'd here
after this Arraign'd
no Bar.

IN Easter Term the 3d of *May* 1681, Dr. *Plunket* was arraign'd at the King's Bench Bar for High Treason: The Doctor said, he had been indicted and arraign'd for the same Treason in *Ireland*; but on the Day appointed for his Tryal no Witnesses appear'd against him, and he made some Doubt whether he could be try'd here for the same Fact.

The Court acquainted him, that by an *English* Statute he might be try'd in *England* for Facts arising in *Ireland*: And that an Indictment and Arraignment, whereon there was no Conviction or

Ac-

Acquittal, cou'd not be pleaded in Bar of an Indictment for the same Treason, whereupon he pleaded *Not Guilty*, and desir'd Time to send for his Witnesses from *Ireland*; and the Tryal was appointed to be the first *Wednesday* in *Trinity* Term, being five Weeks after his Arraignment.

Wednesday the 8th of *June*, the Doctor was brought to his Tryal at the King's Bench-Bar: The Dr. said, he had been a Year and half a close Prisoner in *Ireland*, and he was advis'd, when he was brought over, that he cou'd not be try'd here; for that the Statute of *Hen. VIII.* nor any other Statutes of *England*, were in Force in *Ireland* since *Poigning's* Law, unless *Ireland* was particularly nam'd in them; but that the Court, he found, were of another Opinion: And he had sent for several Records of the Convictions of some Witnesses that were to be produc'd against him, but the proper Officers had refus'd him Copies of them, without an Order of Court; and that several of his Witnesses were afraid to come over without the Protection of the Court; so that he was very much unprepar'd for his Tryal, and desir'd he might have the Assistance of the Court to bring over such Records and Witnesses as he wanted; and that he might have his Tryal put off 'till he cou'd have them; Affidavit having been made in Court of these Matters the Day before.

The Court answer'd, That if his Witnesses were so conscious they wou'd not come, they cou'd not help it; and that he had had more Time than usual to prepare for his Defence already, and order'd a Jury to be sworn.

He was indicted by the Name of *Oliver Plunket*, of *Westminster*, in the County of *Middlesex*, Doctor of Divinity: And the Indictment sets forth, That the Prisoner, not weighing the Duty of his Allegiance, &c. did, on the 1st Day of *December*, in the 32d Year of the King, and divers other Days and Times, at *Dublin* in the Kingdom of *Ireland*, traitorously compass and imagine the Death of the King, and the Subversion of the Religion and Government establish'd there: And that the Prisoner, to accomplish his said traitorous Intentions

His Tryal co es
on.

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The Indictment
for Treason, in
conspiring the
Death of his Ma-
jesty and the Sub-
version of the es-
tablish'd Religion
and Government,
by inviting a
French Invasion,
&c.

and Imaginations, did, at the Time and Place aforesaid, traitorously assemble, consult, and agree, with divers other Traitors unknown, to depose and murder his Majesty, to raise War, and introduce the Romish Religion into the Kingdom of Ireland: And that in order the sooner to effect his said traitorous Purposes, the Prisoner, together with other false Traitors unknown, did agree to contribute and pay divers Sums of Money to certain Persons, to promote them to kill the King, and introduce the Romish Religion: And did also then and there collect, pay, and expend several other Sums of Money to maintain and assist the said Traitors in their said Treasons, against the Duty of his Allegiance, the King's Peace, &c.

The King's Counsel open the Indictment and the Evidence.

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The Indictment being read, and the Jury charg'd with the Prisoner, Mr. *Heath* open'd the Indictment, and Mr. Serj. *Maynard* and Mr. Attorney open'd the Evidence: After which the King's Witnesses were call'd, and first,

Florence Wyer was sworn.

Mr. Sol. Gen. Pray acquaint the Court what you know of any Plot to bring in the French King, or to introduce the Romish Religion in Ireland.

Evidence of the French King's Design to invade Ireland, and the Prisoner's collecting Money to facilitate it.

Wyer. The Contrivance began in 65; in 67, the King of France sent Col. *Miles*, *Re'y*, and Col. *Bourne*, into Ireland, to muster what Men they cou'd, and promis'd to send an Army of 40000 Men to *Carlingford* the August following, with Commission to establish the French King's Authority and the Roman Catholick Religion; and *Edmund Angle*, who was a Justice of Peace and Clerk of the Crown, headed the Northern Rebels, and fir'd the chief Town in the County of *Longford*, and design'd to open the Goal for the Prisoners to join them, but the People who were fled to the Castle wounding *Angle*, that he fell from his Horse, the Rebels fled, and one *Charles Mac-Canal* took all the Papers out of *Angle's* Pocket, which prevented the Discovery of the whole Design. On this *Bourne* was suspected, and committed to *Newgate* in Ireland, and *Re'y* fled to France; and presently after, *Raley* (who was then Primate and chief Promoter of this Plot) dy'd; then one *Duffy*

(by

(by the People's Consent) shou'd have succeeded ; but on the Prisoner's engaging to surprize the Kingdom before the Government were appriz'd (provided the Pope and *French King* wou'd send Forces sufficient to help to effect it) he was preferr'd to the Primacy : I was at *Armagh* Fryery the first Year of his Coming ; and one *Quin* telling him, he thought *Duffy* wou'd have been Primate, the Prisoner answer'd, [Tis better as 'tis, for *Duffy* hath not Wit to manage that which I have undertaken for the general Good of our Religion.]

L. C. J. What was that, did he explain himself?

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Wyer. No farther than those Words ; but I (knowing the other Plot) conceiv'd 'twas to bring in Popery, and subject the Kingdom to the *French King* ; and the Prisoner order'd the inferior Priests, by Warrant, for several Years successfully, to collect Sums of Money, equivalent to their Parishes, *sub pœna suspensionis*, to redeem their Religion from the *English Power*, and to supply the *French Forces* when they came over : He procur'd Money out of the Exchequer for the *Mac-Donels*, on Pretence of Service to the King, and sent them to *France* to improve, and return with the *French Forces* to surprize *Ireland*. I saw a Letter of his to the Grand Rebel *Flemming*, desiring him to go with his Men to *France*, and that he shou'd return a Colonel ; and that he (the Prisoner) wou'd see them safe landed again in *Ireland*, in Spite of all their Enemies.

Mr. Attorney. Do you know his Hand?

Wyer. Yes, as well as my own. Capt. *O'Neal* carry'd three Regiments to the *French King*, and used to come Yearly for Recruits : He perswaded my Brother over, and importun'd me ; saying, 'Twas to improve myself in Military Discipline, and I shou'd return a Captain under the *French King* to surprize *Ireland*, settle the Popish Religion, and then be restor'd to my Estate ; and he told me, Dr. *Plunket* was the only Man trusted to make Preparations against the *French Forces* landed at *Carlingford*.

L. C. J.

L. C. J. Have you ever heard him own himself Primate?

Wyer. Yes, in the Priory, and that he was made so by the Pope; and he writes himself *Olivarius Armacanus Primas & Metropolitanus solius Hibernia*. I have seen his Commands to his inferior Dignitaries in the Time of his Imprisonments, that they shou'd not forget to bring in the Monies assess'd for Supply of the French Army, for that his Imprisonment wou'd prevent Suspicion.

Mr. Attorney. What do you know of his issuing Warrants for Lists of Men?

Wyer. I never saw any, but have heard the Priests say, they were to inform him of the Number of Men in each Parish, from 16 to 60; but I have seen him go from Port to Port, as *Derry, Carricfergus, Castledown, Carlingford, &c.* and have heard, 'twas to view the Strength of the Garrisons; and that he pitch'd upon *Carlingford* as most convenient for the French Army to land.

Mr. Attorney. Dr *Plunket*, will you ask him any Questions?

Dr. *Plunket*. Why did he let it rest so many Years without Discovery?

Wyer. *Meyer* and I consulted, and he, by my Order, discover'd it; but (by the Prisoner's Means) he has gone in Danger of his Life for it.

Henry O-Neal was sworn.

Henry O-Neal. In August 78, I was at Vicar-Gen. *Brady's*, whither Bishop *Tirril* came with 40 odd Horse-Men, and there gave them an Oath to destroy all the Protestants from one End of *Ireland* to the other in one Hour, and I was oblig'd to take it; and *Brady* said, that he wou'd return in two Days, with an Order from my Lord *Oliver Plunket*, and bid them they shou'd not fear its Effect, for that *Plunket* and he had sent Money into *France* to bring over French Forces: In Sept. following, there was another Meeting at *Virginia* in *Connanght*, where they took *Mac-Leigh* a Priest, by whose Desire I went to *Dublin*, and discover'd it to Sir *John Davis*, but *Plunket* I never saw.

Then *Neal O-Neal* was sworn.

He depos'd, That he was with his Foster-Mc-ther, who was House-keeper to Vicar-Gen. *Brady*, and saw Bishop *Tirril* come to give the aforesaid Oath; and being ask'd why he did not discover it before? answer'd, [There were many wiser than I there that did not do it.]

Then *Owen Murfey* was sworn, but having nothing to say but what he heard from others, he was set by.

Then *Hugh Duff* was sworn.

Mr. Attorney. Tell my Lord what you know of this Plot and the Prisoner.

Duff. I was Chaplain to Dr. *Duffey*, (the Queen of *Spain's* Confessor) who was very intimate with the Prisoner, and I have been often with them in 73, 74, and 75, when they have been contriving to carry on the Plot; and the Prisoner said, he could prevail with the King of *France*, and Dr. *Duff* with the King of *Spain*, and they agreed to raise from 10 to 40 s. per Ann. on each Priest in *Ireland*, according to his Pension and Parish.

Mr. Attorney. What Discourse had they about the *French*?

Duff. I went to live in a Convent in *France*, and in the Year 77 Cardinal *Bouillon* shew'd me a Letter from the Prisoner, desiring the Cardinal to prevail with the King of *France* to forbear invading *Spain*, and admir'd he did not rather wage War with *England*, and assist poor *Ireland*, that was tormented with Heretical Jurisdiction.

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Mr. Attorney. Sir, You were speaking of raising Money, did you see any Precepts about it?

Duff. Yes, several; I was Curate to Father *Murfey*; and, in his Absence, have receiv'd Letters from the Prisoner as Primate (and stil'd *Olivernus Armanicus, &c.*) to raise 20 and 40 s. a Time, and have sent it to his House for his Agent at *Rome*.

Mr. Attorney. Were you present at any of the General Consultations?

Duff. Yes, at *Clouds*, (in 71) where 500 People were confirm'd; and they afterward withdrew into a Garden, where the Prisoner stood in the Midst, and every one kneel'd and kiss'd his Hand; and 'twas then agreed, that the Gentry of *Armagh*,
Me

Monaghan, and *Connaught*, shou'd join the *French* and *Spanish* Forces ; and then they had a more private Consult about getting a List of those who were Officers in the late Rebellion, and of those who had lost their Estates, because they thought they wou'd be most forward to destroy the Protestants.

Mr. Attorney. Did you go into the Consult ?

Duffy. Yes, and was as willing to promote it as any one : The Prisoner likewise made a Speech of our Faith and Religion ; and that each Man shou'd provide Money according to his Ability, for the *French* and *Spaniards*, who were shortly to come over.

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Mr. Attorney. Do you know of any Order he sent to raise Money, after he was taken ?

Duffy. I saw two or three for that Purpose ; and he said, that the only Time to effect it, was whilst he was in Prison, because he shou'd not be suspected ; and that the *French* and *Spaniards* shou'd take that Advantage.

Mr. J. Jones. Did the Lay-Gentry agree to pay nothing ?

Duffy. I know nothing of them ; I paid for two or three Years towards the Design.

Mr. Attorney. What do you know of a List to be given in of all Persons of such an Age ?

Duffy. By the Prisoner's Order I gave him a List of the Age of every Person in the Parish of *Coghan*, where I was Curate, being in Number about 250.

Mr. Attorney. Do you know any Thing of his going to view the Ports ?

Duffy. I accompany'd him to *Carlingsford*, when he went to view the Place ; there was no great Garrison in it ; and as a Ship might come up to the Gates and surprize the Town, he concluded that the *French* Army might safely land there.

Mr. Attorney. What do you know of delivering Ammunition and Arms ?

Duffy. He sent some of the collected Money to get Ammunition.

Dr. Plunket. Can you shew any Order which came to you to raise Money ?

Duffy.

Duffy. I brought none, because I thought they were needless; and I have seen not only his Paper to the County of *Monaghan*, but also twenty of them pay Money.

Plunket. Why did not you discover this to some Justice of Peace?

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Mr. J. Dolben. He tells you he was as willing then to forward it as you.

Duffy. I was so; but seeing how the poor People of *France* are brought into Slavery by the *French King*, I had rather the Devil shou'd reign over us than a *Frenchman*.

Mr. Solicitor. Tell how you came to remember that you saw him at Sir *Nicholas Plunket's*.

Duffy. Bishop *Duffy* and the Prisoner had a Difference there; and the Bishop said, were I as ill a Man as you, I cou'd hang you, and might have been Primate, if I'd have undertaken those ill Things you have done; and Sir *Nicholas* asking what 'twas, the Bishop answer'd, to raise 60000 Men when ever the *French* or *Spaniards* shou'd wage War with *England*, *Scotland*, or *Ireland*; and the Prisoner said, 'twas as much to exalt the *Romish Clergy* and those Gentry who had lost their Estates, as for his own Good.

Plunket. Is not this out of Malice for my correcting some of the Clergy?

Duffy. As I was a Fryer, you had nothing to do with me.

Then *Edmund Murfey* was sworn.

Mr. Attorney. Tell your Knowledge of Dr. *Plunket* and the *Irish Plot*.

Murfey. Out of nine Witnesses, I have but one in Town; but if you'll respite the Tryal 'till next Term, then I can bring 10 Witnesses.

Mr. Attorney. Do you speak your own Evidence?

Murfey. I refer you to the King and Council for that; I may be call'd in Question for this Evidence.

Mr. Attorney. Remember what you swore before the Grand-Jury, is that true, and tell it?

Murfey. I can't say but that it's true, but I have forgot it.

Mr.

The TRIAL of

Mr. Attorney. I'll refresh your Memory. What do you know of *Plunket's* Orders to raise Money for the Priests?

Mursey. There were Orders from the Vicar-General, I suppose, by his Direction; I had them in my Hand, but I had them from another, not from him.

Mr. Attorney. What Talk had you with *Oliver Plunket* about raising Money? Tell the Truth.

Mursey. About raising Money! I did not converse with him about Money; I know, if the Duke of *York* and Duke of *Ormond* had proceeded according to Intention, it was expected the *French* and *Irish* would, at the same Time, fall on the *English* Nation.

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Page 725.

L. C. J. Pray, answer directly; Have you discours'd with the Prisoner about raising Money in *Ireland*?

Mursey. I have discours'd the Vicar-General, and had Orders from him, and seen Money paid him, but none to *Plunket*.

L. C. J. Come, don't trifle, have you had any Discourse with Mr. *Plunket*?

Mursey. Yes, about this, that if the Duke of *York* and Duke of *Monmouth* fell out, he had some Men to raise, and that if the Duke of *Monmouth* would raise the Protestant Religion. —

L. C. J. Were you a Protestant, Sir?

Mursey. No, I am a Priest; but it's indifferent to me whether I be a Protestant or a Priest, and to see so many Witnesses come in that never knew *Plunket*, makes me forget my self.

L. C. J. Will you answer directly, and tell me what discourse you had with Primate *Plunket*?

Mursey. My Lord, I did not impeach Primate *Plunket*, but the Officers and Justices, that he should find so many Catholics in *Ireland* if the Duke of *York* and Duke of *Monmouth* fell out.

Mr. Serj. *Jefferies*. I saw him look in his Hat, I desire he may be search'd if he has not Papers about him.

[Then he went out of the Court, and could scarce be perswaded to return.]

Mr. At-

Mr. Attorney. Mr. Solicitor and I heard him give fuller Evidence in all Particulars than *Duffy* to the Grand Jury, but the Tryal coming on he absconded, and I heard he was at the *Spanish* Ambassador's, and sent for him; but the Ambassador's Servants beat the Messengers, but his Excellency being sent to, promis'd he shou'd be brought; and he told me last Night that what he had sworn before the Grand Jury was true, and that he was ready to make it out.

Mursey. I told the Grand Jury that my Lord *Plunket* design'd to get 60 or 70000 Men in *Ireland* if the Duke of *York* and Duke of *Monmouth* should fall out.

Mr. Attorney. Not one Word of that did he say.

L. C. J. What were those Men to do?

Mursey. To establish, if Occasion shou'd be — the Romish Religion, as I understood.

Mr. J. *Jones*. And you understood it from *Plunket* himself?

Mursey. As soon as I receiv'd Letters from the Vicar-Gen. to collect Money, I sent 'em to a Privy Councillor.

L. C. J. Don't you know that *Plunket* was engag'd to assist the *French* Army?

Mursey. I have discours'd him about several Matters, but don't know it by him: I had a Correspondence in *France* with one *Maccarty* at the same Time.

Mr. J. *Dolben*. With whom had *Plunket* Correspondence in *France*, and to what End?

Mursey. With Dr. *Gray* and others, but I don't know how these People come to swear against him.

Mr. Serj. *Jefferies*. He has fenc'd from the Beginning, I desire he may be committed. [Which was done.]

And *John Mac-Leigh* was sworn.

Sir *Fr. Withens*. Tell the Court what you know of the Plot to bring the *French* into *Ireland*.

Mac-Leigh. When I was Parish-Priest, in the County of *Monaghan*, I had Orders from Dr. *Plunket* to raise Money in my Parish, *sub pena suspensionis*,

suspensionis, and I paid him 40s. in 74; 50s. in 75, and at other Times other Sums, which he said was for Arms and Ammunition for the Roman Catholicks, and for bringing in the French; and several, who would not pay it, were to be suspended, for tho' we had other Superiors, yet, as Primate, he could suspend Bishops, and other inferior Clergy.

Plunket. Why did you keep it secret all this while?

Mac-Leigh. I durst not discover it my self for fear of being suspended and excommunicated, but in 77, I (being in France) sent Mr. Henry O-Neal to Dublin to discover it.

Mr. Serj. *Jefferies*. Were you at Vicar Brady's House?

Mac-Leigh. Yes, and saw Bishop Tirrel give the Oaths, as has been already testify'd.

Mr. Attorney. What do you know of any Letters from *Plunket*?

Mac-Leigh. When I was in Brittany with Bishop Tirrel and Dr. Cray, Duke John of Brittany shew'd us a Copy of Dr. *Plunket's* Conditions with the French King, which were to seize Dublin, London-derry, and all the Sea Ports, to levy War and destroy all the Protestants, and that the King of France shou'd protect them during his Life; they were writ in Latin.

L. C. J. What do you know of his being Primate, and on what Condition was he made so?

Mac-Leigh. He was made Primate by the Election of the King of France, on those Conditions.

Then John Moyer was sworn.

Mr. J. Jones. What do you know of Dr. *Plunket*, and of the Plot in Ireland?

Moyer. I know he was made Primate on his Engagement to restore the Catholick Government, and when I was in the Convent of St. Frances, at Rome, I heard several Cardinals say, that the Kingdom of Ireland shou'd come under the Catholick Government by Means of the Lord Primate *Plunket*.

Mr. At-

Mr. Attorney. What do you know of your self?

Moyer. Coming from *Rome* I met a young Gentleman, of the Family of the *O-Neale's*, in a Convent of the Order of *St. Francis*, who had been the Lord Primate's Page; he had a Packet of Commendatory Letters (as he said) to the Secretary of the College, *de propaganda fide*, to enter him therein; and Father *Crawley* and I open'd them, and found they were written in *Latin* and *Italian*; I translated them five Years ago, and am certain I have added nothing to the Sense of them; but the Copy which I writ from the Original of the Primate's own Hand-writing, was taken from me last Year by the Soldiers, at my being seiz'd by Mr. *Murfey* and Mr. *Heskrington*, but I have here the original Statutes made at *Clons*, sign'd by Primate *Plunket*, and, by Mistake, deliver'd a Copy to the Page.

[The Letter was read by him, and the Paper of Statutes shewn the Prisoner, who own'd 'twas his Hand.]

Moyer. There is an Order in those Statutes wherein *Ireland* was bound to send Money to *Rome* on such a Design.

Mr. Attorney. 'Tis 500*l.* in the whole.

Plunket. My Lord, 'tis put in with other Ink; all Countries have an Agent at *Rome*, and he must have a Maintenance; 'twas 50*l.* and for that Use, but there's a Cypher added.

L. C. J. Whether 50 or 500 is all one, the Money was to be rais'd by your Order, and you had better reserve your self to answer that and the Letter together; this is but small Part of the Evidence.

Mr. Attorney. Pray relate what fell out about this Letter you were speaking of.

Moyer. I met with two *Irish* Captains at *Marseilles*, who knew the Contents of it as well as I, and said, they hop'd, by the *French* King's Help, to have the Roman Catholick Faith set up in their own Country. After my Arrival in *Ireland*, I receiv'd Commendatory Letters to apply to my Lord Primate for Leave to preach

and hear Confession, who approv'd me, and I then told him I saw the Contents of the Letter which he sent by young *O-Neale*, and that the Intent was good if it cou'd be done without Bloodshed; he paus'd some Time, and then desir'd me to be secret, and said, he did it not for his own Good, but the Good of Catholics; and commended me to a Parish, and offer'd me high Promotion to further the Design amongst my Friends and Relations, and such as were old Commanders that I knew to be private. Shortly after, in 76, the Prisoner, Bishop *Tirrel*, Captain *Con O-Neale*, and others, came to our Priory, and there agreed to send *Con* to *France* and *Barcelona*, with Instructions that they were ready to assist any foreign Army that shou'd help the Design; and Captain *Con* departed accordingly. Soon after my Lord Primate calls a General Provincial Council, and sends Orders to all the Parish-Priests to levy Taxes, and to send new Lists, to see if the Numbers agreed with those they had sent to *Rome*; and whilst those Lords collected the Money, Father *O-Neale* went to view the Forts of *Charlemont* and *Dungannon*.

Mr. J. Dolben. Have you paid him any Money?

Moyer. I (being a regular Priest) was exempted; but I have seen others pay Money, and saw the Orders which specify'd the raising Money both for the Agent at *Rome* and to make Preparation for joining the *French* Army; and I being willing to prevent such wicked Doings, inform'd the next Justice, who was as hearty in it as the Prisoner.

Plunket. I desire to know when he left *Ireland*?

Moyer. In 62 or 63. I saw your Letters with the young Man at *Caprennica* in 72, and return'd to *Ireland* in 74.

Plunket. How did you know my Hand, which you had never seen?

Moyer. I have seen it to several Instruments and Letters which the Cardinals at *Rome* said was your Hand, and I know it to be the same I have since seen; besides, he acknowledg'd the Letter

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Letter sent by *O-Neale*, and desir'd me to be secret, as I have already said, and he has since sent Proposals to offer me 100*l.* if I would not prosecute, (as they told me) and they gave me a Guinea in Hand.

Plunket. I desire to know if this be his Writing, [shews a Paper] and that it may be read. [It was an Answer to a Citation from the Father-Guardian, dated 1 July 78, that if the Lord *Plunket* did not make Reparation for defaming him, he wou'd cause his Name to be fix'd on every publick Place.] And *Moyer* own'd 'twas his Hand.

Plunket. You see, my Lord, I had denounc'd him, and is it likely I shou'd trust him with this Secret?

L. C. J. You flatter'd him then when you found he knew it, and promis'd to promote him.

Moyer. My Lord, dreading the Consequences of a War, I apply'd my self to a Privy Counsellor, gave in my Informations the 7th of December 76, and then he excommunicated me, and contriv'd Means to get the Letters out of my Hand.

Plunket. You may here see on what Account he fell out with me: Ask him if this other Letter be his Hand?

Moyer acknowledg'd the Hand and read it, [twas to his Father-Guardian, dated April 23, 78, and the Purport was, that he hop'd his Reverence had consider'd the Wrong he had sustain'd by his envious Adversaries, only for standing for the Fryers Rights, and striving to prevent his Country's Ruin.]

Plunket. My Lord, what he calls the Destruction of his Country, is because I hinder'd the Fryers to beg there; for that he differ'd with me, and here's his own Superior's Order upon it.

L. C. J. We can't meddle with your Superior's Orders, they are nothing before us.

Plunket. My Lord, he was indicted and convicted for giving Powder and Shot to the Rebels.

L. C. J. Produce the Record if you have any such Thing.

Moyer. It was a Rebel swore against me that you absolv'd.

Plunket. He hath been found guilty; he will acknowledge it himself.

L. C. J. He is not bound to answer such Questions; What have you to say for your self?

The Prisoner's
Defence.

Plunket. My Lord, it's all Malice, as I could easily make appear if I had been allow'd Time to have brought over my Records and Witnesses; or had I been try'd in *Ireland*, both I and my Accusers would have been known.

L. C. J. Here are several Things you would do well to answer, for they stick close to you, viz. your undertaking to raise 70000 Men to join the *French*, your taking a List of all that were able to bear Arms, your viewing the Forts to be secur'd, and the Ports where they should land, and your raising Money for their Supply. All these are Treason, and you ought to consider your Answer.

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Page 731.

Plunket. My Lord, I never receiv'd above 60*l.* per Annum, which was for my own Maintenance: I never could keep a Servant, and this was attested before the Council in *Ireland*; and 'twas a poor Livelihood; I had only a little thatch'd House with a small Library not seven Foot high, where this Fellow came to affront me because I hinder'd him from Begging; and for the Men I never made a List or gave Order for any to be made, neither was I ever at *Dungannon*, *Carlingford*, &c. and it's well known that's a very improper Place for any Army to land in; nor have I had any Agent in *Rome* this seven Years, for I was not able to maintain him; and if I had been allow'd till the latter End of the Term I would have prov'd it to be mere Malice.

L. C. J. But you forget your own Letter wherein this Matter is contain'd.

Plunket. My Lord, I never entertain'd *O-Neale* as a Servant, nor sent any Letters by him; he went over Begging, and was a Straggler in *Rome*, as I can prove by three Witnesses.

Moyer.

Moyer. His Brother-in-Law will testify he was your Lordship's Page.

Then *Hanlet* was call'd.

Sir Fr. Withens. Did you know *Neale O-Neale*?

Hanlet. Yes, I saw him at *Mantua*; he was sent to *Rome* with Letters from my Lord *Plunket*, and was esteem'd as his Servant; he went on Foot but did not beg.

L. C. J. Mr. *Plunket*, if you would ask any Questions, or have any Witnesses to produce, this is your Time, otherwise we must leave your Case to the Jury.

Dr. *Plunket* then repeated some of his former Observations, as to the Hardness of his Case, in being try'd in a strange Country and without his Witnesses, &c. After which, Mr. Solicitor General summ'd up the Evidence for the King, and Mr. Serj. *Jefferies* made some obvious Observations on the Evidence.

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Then the Chief Justice directed the Jury, that if they believ'd the Evidence that the Prisoner had incited the *French* to invade the Kingdom of *Ireland*, and collected Money to facilitate the Invasion, they ought to find him guilty: And the Jury having withdrawn about a quarter of an Hour, brought the Prisoner in Guilty, and he was remanded to Prison.

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The Chief Justice directs the Jury.

The 15th of *June*, 1681, Dr. *Plunket* was again brought to the Bar, and it being demanded of him what he had to say why Judgment of Death shou'd not pass upon him according to Law, the Dr. made a Speech, shewing the Improbability of the Treason he was charg'd with, and tells the Court that none of these Witnesses dare appear against him at his Arraignment in *Ireland*, where both his and their Characters were known, and where a better Judgment might have been made of the Truth of the Evidence by those who were acquainted with the Situation of the Country, and other Circumstances which wou'd have tended to clear up the Fact; but concluded, that since he had not an Opportunity of making out his Innocence he must submit to their Mercy.

The Prisoner is convicted.

The TRIAL of

The Chief Justice acquainted the Prisoner that there were several Precedents of Persons of that Kingdom who had been try'd here for Treasons committed there, and particularly *O-Rorke*, and that he had been allow'd five or six Weeks to send for his Witnesses, which was an unusual Favour, and therefore he had no Reason to complain of any Hardships.

Sentence pass'd.

He is executed.

Then the Lord Chief Justice pronounc'd Sentence on Dr. *Plunket* as a Traitor, and he was executed accordingly the 1st of July following.

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Page 737.

The TRIAL of Sir MILES STAPLETON, Bart. for High Treason, at the Assizes for the County of York, the 18th Day of July, 33 Car. 2. 1681.

The Prisoner sent to York, there to be try'd, tho' the Indictment had been remov'd into the King's Bench.

The Indictment for conspiring the King's Death and the Subversion of the establish'd Religion and Government.

THE Indictment being found at a Sessions of Oyer and Terminer for the County of York, was mov'd by *Certiorari* into the King's Bench, where the Prisoner was arraign'd, and afterwards sent down to be try'd in the County of York.

The Indictment sets forth, That Sir *Miles Stapleton*, late of *Carlton* in the County of York, notwithstanding the Duty of his Allegiance, &c. did, on the 30th of May, in the 31st Year of the King, at the Parish of *Barwick* in *Elmet*, in the the *Westriding* of the said County of York, traitorously compass, imagine, and intend the Death of the King and the Subversion of the establish'd Religion and Government; and that to accomplish his said traitorous Imaginations and Purposes, he, the said Sir *Miles Stapleton*, together with certain other false Traitors unknown, did, on the said 30th of May, at the Parish of *Barwick* aforesaid, assemble, consult, and agree to depose the King and put him to Death, and introduce the Romish Religion; and in Order to effect the said Treasons, did farther agree to contribute and pay to certain other Persons, the King's Subjects, divers Sums of

of Money to procure then to kill his Majesty and introduce the Romish Religion, against the Duty of his Allegiance, the King's Peace, &c.

To this Indictment Sir *Miles Stapleton* plead-
ed, Not Guilty.

At the Lent Assizes Sir *Miles Stapleton* and the King's Council challeng'd so many of the Jurors that there did not remain enough to try him, whereupon the Tryal was put off till the following Assizes: Mr. *J. Dolben* held it to be a good Exception that was made by Sir *Thomas Stringer* (of Counsel for the King) to *Christopher Tankard*, Esq; one of the Jurors, That he had disparag'd the Evidence of the Popish Plot, and gave his Dogs the Names of *Ores* and *Bedloe*, the King's Witnesses.

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A Juror chal-
leng'd by the
King's Council
because he gave
his Dogs the
Names of *Ores*
and *Bedloe*.
The Tryal put off
for want of Ju-
rors.

At the Assizes held for the County of *York*, the 18th of *July*, 1681, Sir *Miles Stapleton* was again brought to the Bar, and after several Challenges, as well on the Part of the King as of the Prisoner, a Jury was sworn: And Sir *Thomas Stringer* having open'd the Indictment and the Evidence, the King's Witnesses were call'd, and first,

Mr. *John Smith* was sworn.

Mr. *J. Dolben*. Mr. *Smith*, pray tell the Court what you know of the Plot.

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Smith. Then I must relate what happen'd to me beyond Sea. — When I first went to *Paris*, Abbot *Montague* and Mr. *Car* told me, th y had great Friends about the *English* Court, that many Jesuits were lately sent into *England*, and that I shou'd have great Preferment if I wou'd turn to the Romish Religion; after some Stay there, I went for *Rome*, where the Fathers *Anderson*, *Southwel*, and *Campion*, introduc'd me to Cardinal *Grimaldi*, who told me there was great Likelihood of establishing the Romish Religion in *England*, and offer'd me Preferment if I wou'd turn to it; and he, at length, pervert-ed me, and finding I was willing to study, sent me to an *Italian* College, where I came acquainted with all the secular Priests, *English*, *Scotch*, and *French*, who told me what Interest had

Smith's Evidence
of the Plot in ge-
neral.

been made in *England* by Cardinal *Norfolk's* coming in, and that there was but one Man in the Way, and that they had Men ready who would soon remove him.

Mr. J. Dolben. Did they mean the King?

Smith. Yes, my Lord; I left the *Italian* and went to the *English* College, and there the Rector and Father *Mondford* told me, they did not doubt but by this Cardinal *Norfolk's* Means to take off the King: And I had Emissary Letters when I came away, and Cardinal *Perorin* introduc'd me to kiss the Pope's Toe, and I had his Blessing and particular Indulgence; and the Cardinal told me there was one Man who had promis'd 'em fair but perform'd nothing, that he must be taken off, and I might be instrumental. At my coming to *London* I apply'd my self to the Arch Priest *Purrat*, and the Proclamation for apprehending Priests coming out, I resid'd with *Purrat* at the Ambassador's, and several Clergy there said they doubted not but Popery would soon be settled in *England*.

Mr. J. Dolben. Do you know of any Conspiracy in *Yorkshire*?

Smith. My Lord, after I left the Ambassador's I came to live at Mr. *Jennison's*, where Mr. *Thwyng* (lately executed) and other Priests that met there, were of Opinion the King would be taken off unless he brought in Popery; and they desir'd me to perswade Mr. *Jennison* to send his Daughters to *Dolebanck* Nunnery, but I (knowing the Design) refus'd it, and Mr. *Thwyng* asking me how they gave Money in the Bishoprick, I told him some gave more and some less, and I enquir'd how it was rais'd in *Yorkshire*, and he said, some gave freely, but that his Uncle and his Friends were bent another Way, being going to make a Foundation for *Dolebanck*, and that Sir *Miles* was very zealous and contributed largely.

Mr. J. Dolben. What were those Collections for?

Smith. We understood my Lord that 'twas for killing the King and extirpating the Protestant Religion,

Religion, but pretended 'twas for repairing a College at *Doway*.

Mr. Robert Bolron was call'd and sworn.

Sir Thomas Stringer. Acquaint my Lords and the Jury what you know of Sir Miles Stapleton.

Bolron. I went to live with Sir Thomas Gascoign in 74, and was there perswaded to turn Roman Catholick, and being ask'd, about 76, what I wou'd do for the Romish Religion, and answering I wou'd venture my Life in the Cause, Father *Rushon* gave me the Oath of Secrecy, and about *Whitsontide*, 77, Sir Miles Stapleton, Sir Thomas Gascoigne, Squire Gascoigne, my Lady *Tempest*, Mr. *Inglesby*, Mr. *Thwyng*, *Rushon*, and others, held a Consult at *Barnlow-Hall* about killing the King and establishing a Nunnery: Sir Thomas gave 90*l.* per Annum and 300*l.* for killing the King, and Sir Miles said he wou'd give 200*l.* for killing the King; and they said, if the Duke of *York* did not please they wou'd serve him like his Brother; and they said they wou'd get the Duke's Consent for Sir Miles to be a Privy Counsellor. The 13th of *June*, 78, 'twas agreed at another Consult to secure *Hull*, as a fit Place for the *French* to land at.

Bolron's Evidence against Sir Miles.

Lawrence Monbray was call'd and sworn.

Sir Thomas Stringer. Tell the Court what you know against Sir Miles Stapleton.

Monbray. Sir Miles was present with Sir Thomas and Squire Gascoigne, my Lady *Tempest*, and others, in 76, when *Rushon* gave them the Oath of Secrecy, and they discours'd about killing the King, subverting the Government, bringing in Popery, and the firing of *London*, and Sir Miles said he'd venture his Life and Fortune for killing the King; and I had an Indulgence for Time past, being to enter into the Rosary.

Monbray's Evidence.

Mr. J. Dolben. Mr. Bolron, you say you saw a collusive Conveyance made by Sir Miles Stapleton to Sir John Dancy?

Bolron. I did, my Lord, in 75, and told Sir John Dancy of it at Sir Thomas Yarborough's.

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Mr. Bayns

Mr. Bayns was call'd and sworn.

Sir Thomas Stringer. Come, Mr. Bayns, declare to the Court what you know against Sir Miles.

Bayns. I only know that he came often to Barnlow-Hall, in 76 and 77, to Sir Thomas and my Lady Tempest, but don't know what 'twas about, they once talk'd of Nuns beyond Sea, that were galloping Nuns.

Sir Miles. Mr. Bolron, did you accuse me to Mr. Lowder, or did I desire you to be secret for me?

Bolron. I did not accuse you to him; and tho' you did not desire my Secrecy Rushron did.

Sir Miles. How long did the Consult last?

Bolron. Six or seven Hours; 'twas held in the old dining Room.

Sir Miles. Pray, on what Occasion was you turn'd out of Sir Thomas Gascoigne's Service?

Bolron. I know not; they say 'twas about a Trunk, and they wou'd have hang'd Mowbray about a Ring that my Lady Tempest accus'd him with, when I can prove where he bought it.

Sir Miles. Mr. Mowbray, when did you first become a Protestant?

Mowbray. In 79, when I gave in my first Information.

Sir Miles. I desire to know if he saw a List of Names?

Mowbray. Yes, 'twas a List of the Actors and Contributors for killing the King, and your Name was there.

Sir Miles. Did I, or any other, desire you to keep any Secret for me?

Mowbray. Yes, Father Rushron did, but you did not.

Mr. J. Dolben. Well, call your Witnesses.

Mr. Lowder was call'd and examin'd.

Sir Miles. I desire Mr. Lowder will acquaint the Court whether Bolron accus'd me in his Information?

Mr. Lowder. About the 24th of January, 79, Robert Bolron came and told me he had High Treason to impart to me against Sir Thomas Gascoigne and others I order'd my Clerk to bring

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Sir Miles calls his
Witnesses.

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a Bible, and Pen, Ink, and Paper, to take his Information, desiring him to be cautious, for that several Lives were at Stake, and bid him seriously consider what he had to say; and he telling me that he had deliver'd it in Writing to Mr. Tindal, I said, Mr. Tindal will be at my House the 25th, we'll then take it together; accordingly Bolron came and gave his Information to us, and charg'd only *Rushon* and Sir *Thomas Gascoigne*, but said he should recollect more; and I bid him, when he had done it, come again; when he came again, he said, he would not trouble us, he would go and inform the Council, which he did, for I have a Copy of the Order under several of the Council's Hands; after this he goes again to London and brings me another Order of Council to examine *Mowbray* and *Hickeringil*; and I asking him if he knew any Thing concerning Sir *Miles Stapleton*, he said, No, he believ'd he was very clear, but told me, *Mowbray* cou'd say he saw Sir *Miles* at the Consult, and that others would come against Sir *Miles*, and that *Mowbray* would swear to the Conspiracy of killing the King, &c. this was two or three Days before the Examination.

Bolron. My Lord, I knew not what he had to say; Mr. *Mowbray* will affirm he was there at that Time.

Mr. J. Dolben. *Mowbray*, did you tell *Bolron* what you had to say before you came to Mr. *Lowder's*?

Mowbray. 'Tis possible I might tell him somewhat, but not the Particulars.

Mr. *Lowder*. My Lord, I am positive to what I say, if I be brought to my Oath.

Sir *Thomas Tarborough* was call'd.

Sir *Miles*. I desire Sir *Thomas* will declare what *Bolron* said of the Plot after Sir *Thomas Gascoigne* was taken?

Sir *Thomas Tarborough*. The 10th of August, 79, about Eleven at Night, *Bolron* came to speak with me, and I order'd my Servant to bring him into my Chamber, he told me he had an Order of Council to search all suspicious Places for Priests, and he believ'd *Rushon* was at Sir *Miles*

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Page 743.

Miles Stapleton's, and seeing his Name in the Order, I ask'd if 'twas he that inform'd against *Sir Thomas Gascoigne*, and he shew'd me the Article against *Sir Thomas*: I then ask'd him if he knew any thing against *Sir Miles Stapleton*, he answer'd, [no, I protest, I know he has made a collusive Conveyance of his Estate, as most Catholicks have to secure them, but I believe he is Innocent and not any Way concern'd.]

The Lady *Tarborough* was call'd.

She depos'd, That she was in Bed, and heard the Discourse betwixt her Husband and *Bolron*, and that 'twas to the same Effect *Sir Thomas* had declar'd, and added, that in the following Afternoon *Mr. Anby* ask'd *Bolron*, in *Sir Thomas's* Porch, if *Sir Miles* was in the Plot, and that *Bolron* said, he had nothing against *Sir Miles*, he was an honest Gentleman for ought he knew, excepting that he had made a collusive Conveyance of his Estate.

Mr. Normanton was call'd.

He depos'd, That *Bolron* told him *Sir Miles* kept Priests in his House, and that he wou'd apprehend them presently, for that he might have 20 l. a Piece for taking of them.

Richard Peers, *Sir Miles's* Man, was call'd and examin'd.

He depos'd, That three or four Days after *Sir Miles* was taken, *Bolron* ask'd him if they did not blame him for accusing *Sir Miles*, and the Deponent answering he did not hear him nam'd, *Bolron* reply'd, that 'twas not him, but he might not tell who 'twas.

Stephen Thompson was call'd.

Thompson depos'd, That he was bound to *Sir Thomas Gascoigne*, with *Bolron*, for the Payment of 28 l. and 30 l. and that *Bolron* said there was 28 l. good Debts, and he'd take Care to get the other, but said also, if *Sir Thomas* be not kind he [*Bolron*] wou'd do him an ill Turn; and farther depos'd, That before the Plot broke out *Bolron* said there was never a Catholick in *Yorkshire* concern'd in it.

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The Lady *Vavaſcur* was call'd and examin'd. She depos'd, That ſhe believ'd her Husband was not at Sir *Thomas Gaſcoigne's* any Part of that Year the ſaid Conſult was, becauſe he was infirm at *Tork*.

Mr. *Legget* was call'd. Sir *Miles*. Pray, what Money would Mr. *Bolron* have given you when I was taken?

Legget. My Lord, I was preſent at the *George* at *Tork*, when *Bolron* read his Information againſt Sir *Thomas Gaſcoigne*, and ask'd *Monbray* if he knew any Thing of it, and *Monbray* ſaid he did not.

Mr. *J. Dolben*. What's that to the Purpoſe, did he ſay any Thing againſt Sir *Miles*?

Legget. I have heard *Bolron* ſay he knew nothing againſt Sir *Miles*, only that he had made over his Eſtate to Sir *John Dancy*, but after *Bolron* and *Monbray* had been out together, *Bolron* ſaid Sir *Miles* was to be taken into Cuſtody, and told me, if I did it he'd go half Snaps with me, and at laſt ſaid, If he got 100 L. of Sir *Miles*, I ſhould have 20 L. of it.

Mrs. *Eliſabeth Holmes* was call'd.

She depos'd, That juſt before Sir *Thomas Gaſcoigne's* Tryal Mrs. *Bolron* ſaid ſhe believ'd Sir *Thomas* was innocent of the Plot, and that ſhe had nothing to ſay againſt him, as God ſhould judge her Soul; and farther, that Mr. *Bolron* told her, after he came from *Tork*, that he underſtood the Deponent was to be a Witneſs againſt him, but that if ſhe'd be kind to him he'd be kind to her, and ſpeak favourably, and that if he had known he ſhould have been ſo better rewarded, the Devil ſhould have been a Witneſs for him; and that he threatned to puniſh the Deponent unleſs ſhe would unſay what ſhe ſaid at my Lady *Temple's* Tryal.

Sir *Miles*. When did you laſt ſee me, *Bolron*?

Bolron. In 78. I have ſeen you at *Barnham Hall*, but I never ſaw you ſince the Plot broke out.

Sir *Miles*. He ſwore at Sir *Thomas Gaſcoigne's* Tryal, that Sir *Thomas* and I diſcourſ'd about

Otes

Otes and Bedloe; and I can prove we were never together since the Plot broke out.

Mr. J. Dolben. He must be an excellent Witness will swear that: Have you any more Witnesses.

Edward Cooper was call'd.

Cooper depos'd, That being intimate with *Mombrey*, he ask'd him, if what *Bolton* had sworn against *Sir Tho. Gascoigne* was true? and that *Mombrey* said, he might as well have sworn it against any one else; for that he being in the House, must know as well as *Bolton*; and he knew nothing of it.

Madam Sherbourne was call'd.

She depos'd, That *Bolton* and *Mombrey*, under Pretence of searching for Priests, took several Pieces of Silver from her House.

Mr. J. Dolben. We know they have been very bad Men: Well, have you any more Witnesses?

Sir Miles. I can produce my Neighbours of the Church of England to my Character and Reputation.

Sir Tho. Stringer. We allow, Sir Miles hath been a very good Man, till he fell into this great Action; but I desire *Dixon* and *Wilson* may be sworn and examin'd, if they were hir'd at Sir Tho. Gascoigne's Tryal.

Dixon call'd and sworn.

Dixon depos'd, That *John Bailey* offer'd him to be a Witness for Sir Tho. Gascoigne.

Wilson call'd and sworn.

Sir Tho. Stringer. Were you offer'd any Thing by Mr. Babbington to be a Witness for Sir Miles?

Wilson. I was my Lord.

Then *Dixon* depos'd farther, That *Bailey* would have had *Wilson* testify'd that he never saw *Bolton* nor *Admiral* at his House, and that he press'd the same on him, saying 'twas but a Lye.

Wilson. He would have given me 10*l*. and *Hickeringill* offer'd me 10*l*.

Christopher Langley and *Richard Cocker* call'd and sworn.

Sir Tho. Stringer. Tell what hath been offer'd you to give Evidence for Sir Miles.

Langley.

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Langley. William Bailey and John Ross told me, if I would testify for Sir Miles what they directed, I should have a Couple of Oxen and half a Score Sheep.

Cocker testify'd, That he was present, and heard the same Offer made.

Mr. Bayns call'd, and sworn again.

Sir Tho. Stringer. Speak, whether Mrs. Holmes would have had you recanted any Thing against Sir Miles.

Bayns. She offer'd me (if I had any Thing against Sir Miles) 60*l.* per Ann. to hold my Tongue; and Mrs. Hewit told me, she would give me more, if I would say nothing; and they said they knew Sir Miles would stand to it.

I desire the Jury will consider what little Credit has been given to the Witnesses who have been produc'd against me at former Tryals: I speak seriously, I never was at any Consult about these Things, and I believe none that know me will believe it: I never thought Ill of the King in my Life. What Reason was there for it?

Mr. J. Dolben. No Reason at all, but the mad fiery Zeal of the Jesuits; for ever since the Reformation, you have enjoy'd your Estates and Religion without Molestation, but you cannot endure we should quietly enjoy ours.

Then Mr. J. Dolben proceeded to direct the Jury: He told them, that as to what Mr. Smith had heard in France, or at Rome, of the General Design, or what he had from Thynne or others, in relation to Sir Miles, was no Evidence against him; but as to Monbray and Bolton, they had both sworn the Treason positively against Sir Miles Stapleton; and tho' Sir Miles had produc'd some Witnesses to impeach their Credit, he had not produc'd any Record of Conviction against them, and therefore they still remain legal Witnesses.

Mr. Bar. Gregory added, That there were full Evidence against the Prisoner; and he thought there were no material Witnesses produc'd against those who had sworn the Treason: That as to their concealing their Knowledge of Sir Miles's being in the Plot, that was before they became Pro-

Page 747.

Mr. J. Dolben directs the Jury,

As does Mr. Bar. Gregory.

Protestants; and besides, in Discourse, a Man was not bound to tell his Neighbour all he knew: As to what they said afterwards before the Justices of Peace, it was possible they might forget Sir Miles was concern'd at that Time, they were not upon Oath; and they did not come before them as Magistrates, when those Questions were ask'd them.

Sir M Stapleton
is acquitted.

The Jury then withdrew; and, within half an Hour, brought in their Verdict, that the Prisoner was *Not Guilty*.

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*The TRIAL of GEORGE BUSBY for
High Treason, in accepting Popish
Orders, at the Assizes for the County
of Derby, 25 July, 33 Car. 2.*

He is arraign'd.
Says he has a Habeas Corpus to remove him to the King's Bench; but the Grand Jury having found the Bill, is told he must be try'd here

THE Prisoner being arraign'd, said, He had procur'd a *Habeas Corpus* to be remov'd to the King's Bench; but that the Under-Sheriff dying, he had not had the Benefit of it, and desir'd he might be try'd in *London*; but the Court acquainted him, The Grand Jury having found the Bill, he must be try'd in the County.

The Indictment.

The Indictment sets forth, that *George Busby*, of *West-Hallum*, in the County of *Derby*, Clerk, being born within the King's Dominions, was, after the first Year of *Queen Elizabeth*, and before the 16th of *March*, in the 33d of this King, ordain'd a Priest by an Authority deriv'd from the See of *Rome*: And that he did, on the said 16th Day of *March*, in the 33d Year of the King, traitorously reside and remain at the Parish of *West-Hallum* aforesaid, being within the Kingdom of *England*; contrary to the Statute in that Case made and provided, and against the King's Peace,

The King's Council open the Indictment and the Evidence.

To which Indictment the Prisoner pleaded *Not Guilty*, and a Jury was sworn; after which Mr. *Bridges* open'd the Indictment: And Mr. *Coomber* open'd the Evidence, and took Occasion to tell the Jury, that the Prisoner was also concern'd in the

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the Popish-Plot; that the Priests were always promoting such Plots; and that it was better to convict one Priest, than many Felons.

Then the Witnesses for the King were call'd: And first,

Mr. Gilbert was sworn.

Mr. Coombes. Pray tell my Lord and the Jury, what you know concerning the Prisoner at the Bar?

Mr. Gilbert. My Lord, About *November 78*, I receiv'd a Letter from Sir *Simon Degg*, which occasion'd my sending a Warrant to the Constable of *West-Hallam*, to apprehend the Prisoner, who was at that Time reported to be a Jesuit, and to be concern'd in the Plot; but he cou'd not then be found. In *January* following, I attended Mr. *Gray*, who, by Order of Council, search'd Mr. *Powtrel's* House, to whom the Prisoner has been Priest for six or seven Years; and tho' 'twas reported that he was fled, I heard afterwards, that he was then in the House. About two Years ago I receiv'd a Warrant from the Lords of the Council, importing, That *George Busby* was a Priest and Jesuit, and a Conspirator against the Life of his Majesty, &c. and requiring me to apprehend the said *George Busby*, and convey him to the County Gaol, &c. and accordingly I sent to Mr. *Ragnall*, the Under-Sheriff, to come to me the 23d of *March 78*, at *West-Hallam*, on extraordinary Business from the Lords of the Council, which I wou'd communicate at our Meeting: And we search'd again, but to no Purpose, tho' I was afterwards inform'd he was in the House at that Time.

About *August 79*, Mr. *Powtrel* obtain'd a License to travel; and 'twas credibly reported that *Busby* was gone over Sea too, which made me dissuade Sir *W. Waller*, (who came in *January 79*, to search for Priests) and divert him from *Hallam* to another Place; tho' I've been since inform'd, that *Busby* has not been out of *England* since the Discovery of the Plot.

About *Christmas* last, I had Notice that he was walking last Harvest with the Widow *Smally* in Mr. *Powtrel's* Gardens; and the 1st of *March* last,

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I went thither to buy Wood for my Coal-Pits, and (with five or six that I took with me, and the Constable, whom I sent for) search'd the House, but cou'd not find him; and Mrs. *Smally* affirm'd he was in *Flanders*, tho' I was afterwards told, he was walking with her in the Garden when I went first to the House; but I found in *Busby's* Chamber a Crimson Damask Stole and Maniple, an Altar-Stone, Surplice, Box of Wafers, Mass-Books, and divers other Popish Things, pack'd up in a Crimson Sattin Vestment; and a String being fix'd in the Book betwixt *Festa Februarii* and *Festa Martii*, I told them, 'twas apparent the Book had been lately used, and by that imagin'd a Priest was in the House; but they deny'd any had been there in two Years; so I took away the Things, and asking Mr. Justice *Charlton*, at the last Assizes, what I must do with them? he said, They must be burn'd according to Law; but I (imagining 'twould make the Priest more easily apprehended) sent them again to *Hallam*; and two or three Days after, I again went (with some Company to assist me) about Eleven a-Clock at Night, and because (on my acquainting them with my Business) they did not let me in, I order'd the Constable to break open the Door; and tho' I found the Priest's Bed warm, and Fire newly extinguish'd, yet they affirm'd no one had lain there; and after we had search'd 'till Ten the next Morning, and cou'd not find him, the Widow *Smally*, and the rest of the Family, ridicul'd and jeer'd us; on which I made a fresh Search, and order'd some to climb on the Lofts; and, with much Application, and sounding on the Lofts and Cielings, we perceiv'd a false Floor, near a Stack of three Chimneys cover'd with Tiles and Roofing, which I order'd to be broke; which being done, and a Door pull'd open, they found the Prisoner, whom I apprehended; and, after I had allow'd him some Time for Refreshment, I convey'd him to *Derby*, took his Examination, and committed him to *Derby* Gaol. A little after, I sent my Lord *Cornway* an Account of his Apprehension and Commitment, with a Copy of his

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his Examination, who return'd me an Answer, that he had acquainted his Majesty thereof, who approv'd of what I had done.

Busby. My Lord, I am an Alien, born at *Brussels*. I have an Affidavit made from the Register of *Caddington*, where my Father liv'd, of what Children he had before he went beyond Sea; but I have not had Time to procure a Certificate where I was born: My Father left *England* about the Beginning of the Troubles, and I am about 40 Years of Age.

Then the Act for Naturalizing those that were born beyond Sea during the Rebellion, was read.

Joseph Dudley was sworn.

Bar. Street. Do you know the Prisoner at the Bar?

Dudley. I have known him entertain'd by Mr. *Powrell* (to whom I was a Servant) for above six Years, where I have heard him say Mass, Preach and Pray, and have seen him Christen and Catechize like a Parish Priest, but with more Secrecy; and I (tho' not of their Opinion) was intrusted to keep the Doors.

Bar. Street. What do you know of Mr. *Busby's* being an Alien?

Dudley. My Lord, I have heard him in Discourse, with my Master and others, of the late Wars, say, that their House was often plunder'd, and that the first Time the Soldiers came, he hid himself behind the Curtains, being then about two Years old; and that after they were gone, his Mother, and others of the Family, lamenting his Loss, and thinking the Soldiers had taken or made him away, he appear'd, and was receiv'd with great Joy.

Busby. When and with whom did you hear me use such Discourse? You speak it by Hearsay, I suppose.

Dudley. With my Master and others several Times, when they have been talking of the Oppressions of those Times; and you said, the Sufferings of your Family oblig'd them to leave their House; and, my Lord, he said, that when he was about five Years old, he remember'd, that Soldiers coming again to plunder, he hid himself in the

Garden Hedge; and late in the Evening, when the Family thought they had lost him, he appear'd, to their no small Joy; and that presently after this, they went with him beyond Sea, where his Mother had several Children; and I have heard her talk of her being at *Brussels*.

Bar. Street. Mr. *Busby*, he says he had it from your own Mouth, and not from other People; but, Mr. *Dudley*, What can you say as to his being a Priest or a Jesuit?

Dudley. My Lord, Not only my Master, the Family, and other Papists, have own'd him to be a Jesuit, and told me so; but he himself has told it me, particularly once, when I shou'd have been his Convert.

Busby. Pray where and when was it that I told you I was a Jesuit?

Dudley. In *West Hallam* Gardens, when my Master and Mrs. *Smalley* sent me to you; you first talk'd of the Gardens, and then describ'd the Jesuits College at *Liege*, where I think you said you receiv'd Orders: Besides, my Master, Mrs. *Smalley*, Mrs. *Atwood*, and *George Harrison*, have said it; and yourself said, that my Lord *Aston's* Priest, Mr. *Ewert*, was your Tutor when you were (I think) at *St. Omers*.

Busby. How long have you liv'd at *West Hallam*, and what Year did I talk of *Liege* College-Gardens, and say I was a Jesuit?

Dudley. I liv'd there betwixt six and seven Years; but I can't tell the exact Time you said this; 'twas whilst I liv'd there, and when you perswaded me to be a Catholick.

Busby. You take a six Year's Compass; pray what were my Argument's, and tell me the Year and Time, and what induc'd me to say I was a Jesuit?

Dudley. I have been an Hundred Times, alone, with you in the Gardens, and have so far condescended to your Perwasion, that I've been the more trusted by the Family ever since; but, my Lord, I dar'd not consent, for fear of disobliging my Friends; and, on my seeming Inclination, my Master promis'd to take me with him beyond Sea, but

but afterwards order'd me to take Care of his Affairs at *Hallam*, and said, he wou'd send for me before his Return; and there Mr. *Busby* has privately continu'd ever since.

Busby. Pray tell me what Day, Month, or Year, it was, I had this Discourse with you, and how I came so familiar with you?

Bar. Street. 'Tis impossible to tell you the particular Time: Why do you ask such a foolish Question?

Busby. How came you to know I was (as you pretend) a Jesuit?

Dudley. 'Twas at the Head of the Orchard, where you endeavour'd to confirm me in your Opinion; saying, I ought to leave Friends and all Things else, to come to God, for Delays were dangerous; and, my Lord, as to his being a Jesuit, he own'd it, when my Master was committed for refusing the Oath; and said, their Church wou'd not allow it, but did expressly forbid it; and no secular Priest cou'd give Leave to take them; but afterwards, on a Letter from Counsellor *Brent*, his Father-in-Law, that 'twas proper for my Master to do it, and that he cou'd not avoid it, Mr. *Busby* did not much oppose his taking the Oath of Allegiance; and that very Letter Mrs. *Smalley* shew'd me the same Night after Mr. *Busby* was taken, and then burnt it among other Papers.

Mr. Gilbert. For farther Confirmation, I must acquaint your Lordship, that he was Procurator for the Jesuits, and receiv'd their Rents from 73 'till 77, and return'd several great Sums of Money, as may appear by Letters and his Accompt-Book, in which may be perceiv'd his Transactions with several Priests that have been executed, and others: I likewise search'd for, and found divers Vestments, and other Popish Trinkets, besides those before-mention'd, which I have ready to produce; and here's Mr. *Sheppey*, a Minister, who was a Popish Priest, will tell your Lordship the Names and Use of them.

Mr. Sheppey. My Lord, This is a Vestment used when Mass is said, this is a Stole, and this a Maniple, &c.

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Then

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Then *Thomas Howis* was call'd and sworn.

Bar. Street. What can you say of the Prisoner, Friend: Look on him?

Howis. My Lord, I cou'd not have a Man's Daughter I had a Mind to, unless I turn'd Papist; and Mr. *Busby* converted me; and made me believe Matrimony was a Sacrament: He confess'd me, gave me Absolution, made me do Penance, and afterwards marry'd me, for which I was cited into *Litchfield* Court: I have several Times heard him say Mass, and I heard him preach three Times.

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Busby. You were perswaded before you came to me, and declar'd you wou'd turn Catholick.

Howis. Mr. *Sherborn* perswaded me, but your Sermons and Instructions convinc'd me.

Mr. Gilbert. This *Sherborn* was a great Papist, that carry'd Letters, and sold them Books and Trinkets.

Busby. You don't understand Mass; how can you swear I said it?

Howis. You told me 'twas Mass, and you doing the Priestly-Office in the Habit, I believ'd you.

Busby. How can he prove it to be Absolution or Mass, and not understand the Language?

Howis. My Lord, I have receiv'd the Sacrament from Mr. *Busby*, and he christen'd my Child at Dr. *Needham's* of *Stanly-Grange*; and tho' they said I (being Father) ought not to be present, yet I stood in a Corner of the Room, and saw it done; and Mr. *Waldron* was Godfather, and Mrs. *Smally* Godmother.

Elizabeth Evans was call'd and sworn.

Bar. Street. Come, good Woman, what can you say of the Prisoner at the Bar?

Evans. I have heard him say Mass in his Priestly Habit; and I, being Godmother to *Henry Avery's* Child, saw him Christen it: I have several Times been Confess'd and Absolv'd by him, and have receiv'd the Sacrament [being shewn a Box of Wafers] in just such Things as these from him.

Dorothy Saunders was call'd and sworn.

Bar. Street. Well, *Dorothy Saunders*, what say you?

Saunders.

Saunders. I have seen Mr. *Busby* in some of these Vestments saying Mass, and held up a Wafer thus ; and he has Absolv'd and given me the Sacrament ; but I know nothing of his Christening.

Sarah Clarke was call'd and sworn.

Bar. Street. *Sarah Clarke*, have you heard Mr. *Busby* say Mass ?

Clarke. Yes, what he told us was Mass ; and he had Vestments on, and elevated the Host, and put a Wafer in our Mouths, which he said was the Sacrament ; and I have been Confess'd and Absolv'd by him, and have heard he marry'd *Tho. Howis*, but am sure he Christen'd his first Child, for I carry'd it to him.

Busby. How do you know it to be Mass and Absolution, when you don't understand the Language ?

Clarke. You and others have told me the Meaning of what you said ; and all Papists were oblig'd to be there *Sundays* and Holy-days, to prevent a Venial Sin and incurring Penance.

Mr. Gilbert. My Lord, If the Indictment be not fully prov'd, we have more Witnesses to produce.

Bar. Street. I believe the Jury will think it sufficient Evidence. Mr. *Busby*, what can you say for yourself ?

Busby. My Lord, It's impossible I shou'd remember the Story *Dudley* tells of hiding myself in the Curtains at two Years old, and my Mother went beyond Sea before *Edge-Hill Fight* ; and, as I have told your Lordship, I was born there. Neither cou'd *Howis* be cited into *Litchfield Court*, because he was marry'd in a privileg'd Place ; and both he and the other Witnesses say, that the Mass and Absolution were in unknown Language, then how can they swear to what they don't understand ? There are Mattins, Vespers, and Evening-Song, which they can't distinguish from Family Duty, which is often said by Women in an unknown Tongue ; so that this does not particularly prove my Priestly Office.

Bar. Street. You only offer some little Diversions ; you forget Christening, Confessing, &c.

D d 4

Busby.

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Busby. None of them know what they swear; giving Bread is not the Priestly Office; and those Garments were taken from Churches in former Times, and kept in the Family as Antiquities, which I'll call Witnesses to prove, are worn by Laymen as well as Priests. Call *Robert Needham*.

Needham depos'd, That he had said his Prayers in those Vestments, and for that Reason thought his Prayers were the more acceptable.

Busby. To prove my being an Alien, I desire *Charles Humphrevill* may be call'd, [who was sworn] and depos'd, That he had heard Mr. *Busby's* Mother and Brother affirm, that the Prisoner was born at *Brussels*; and that he had search'd the Register at *Coddington*, and had the Affidavit of all Mr. *Busby's* Children that were born there, and *George Busby's* Name was not among them; and farther depos'd, That he had seen Canons who were not in Orders, and Children wear such Vestments beyond Sea.

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Then Mr. *Mayo* was call'd, who likewise depos'd the same, as to the Register of *Coddington*.

Busby. Mr. *Mayo*, Satisfy my Lord of the Disappointment I had of my *Habeas Corpus*.

Mr. *Mayo.* My Lord, I obtain'd an *Habeas Corpus* for Mr. *Busby* last *Easter Term*, which, by some Remissness, became ineffectual: I procur'd another in *Trinity Term*, which was deliver'd to the Sheriff of *Derby*, who dying at *London* presently after, render'd that invalid; so that Mr. *Busby* depending on his Removal to *London*, is not so well provided for Tryal as he otherwise might be.

Bar. *Street.* All this is to little Purpose: Come, Mr. *Busby*, what can you say more?

Then Mr. Bar. *Street* directed the Statute to be read, which makes it Treason to remain in *England* after having accepted Popish Orders, and proceeded to direct the Jury; and told them, That it having been sufficiently prov'd that the Prisoner had exercis'd the Office of a Priest, there needed no other Proof of his being in Orders.

The prisoner is convicted, and Sentence pass'd, but he is reprieved.

The Jury withdrawing, in a short Time return'd, and brought the Prisoner in *Guilty*: And Mr. Bar. *Street* pronounc'd Sentence on him as a Traitor; but

but told him, he was commanded by his Majesty to reprove him.

The TRYAL of STEPHEN COLLEDGE, (commonly call'd The Protestant Joyner) for High Treason at Oxford, by Virtue of a Special Commission of Oyer and Terminer, and Gaol-Delivery, the 17th of August, 33 Car. 2. 1681.

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[Commissioners upon the Bench, the Lord Norreys, Lord Chief Justice North, Mr. J. Jones, Mr. J. Raymond, and Mr. J. Levins.

Stephen Colledge, while he was Prisoner in the Tower, understanding that he was to be try'd at Oxford, petition'd his Majesty, that Mr. Thomas Smith and Mr. Robert West, might come to him, and that he might have Pen, Ink, and Paper, in order to prepare for his Defence.

The Prisoner petitions the King that his Counsel might come to him in the Tower

Whereupon an Order of Council was made, dated the 28th of July, 1681, That he shou'd have Pen, Ink, and Paper; and that Mr. Smith and Mr. West might converse with him as often as he pleas'd, in the Presence of the Warder.

Granted,

The Prisoner afterwards preferr'd another Petition, desiring he might have a Copy of his Indictment, or the particular Charges in it; and that Mr. Wallop, Mr. Smith, Mr. Thompson, Darnel, West, Holles, Rosberam, Lovell, Rowney, Pollexfen, and Mr. Ward, might be assign'd him for Counsel, and Mr. Aaron Smith for his Solicitor; and that they might have Access to him; and that he might have a Copy of the Panel some Days before the Tryal.

A 2d Petition for a Copy of the Indictment, other Counsel, and a Copy of the Panel

Whereupon an Order of Council was made, dated August the 11th, That the Friends and Relations of the said Stephen Colledge shou'd have Access to him, and converse with him in the Tower without Interruption, their Names being first taken in Writing by the Lieutenant of the Tower.

Order'd that his Friends might come to him.

On

The TRIAL of

On Wednesday the 17th of August, 1681, the Judges and Commissioners of Oyer and Terminer, and Gaol-Delivery, being met at the Court-House in the City of Oxford, and the usual Proclamations made, the Prisoner was brought to the Bar and arraign'd.

The Indictment, for compassing the Death of the King, the Subversion of the Government, &c.

The Indictment sets forth, ' That Stephen Colledge, late of Oxford in the County of Oxford, Carpenter, as a false Traitor, &c. not weighing the Duty of his Allegiance, but being mov'd and seduc'd by the Instigation of the Devil, &c. on the 10th Day of March, in the 33d Year of the King, did maliciously and traitorously purpose, compass, and imagine to incite a Rebellion, depose his Majesty, and put him to Death, to alter and subvert the Government, and to levy War against the King within his Realms: And that in order to effect his said traitorous Purposes and Imaginations he did, on the said 10th Day of March, at Oxford aforesaid, maliciously and traitorously prepare Arms, and did arm himself, and did advise and incite one Edward Turberville and others, the King's Subjects, to arm themselves against the King, and gave out that it was purposely design'd to seize the King's Person, and that he, the said Stephen Colledge, would be one of them that shou'd seize him at Oxford aforesaid: And that the better to accomplish his said traitorous Purposes, and promote Discord between the King and his Subjects, he did, at the Time and Place aforesaid, in the Presence and Hearing of many of the King's Subjects, maliciously and traitorously declare, *That nothing of Good was to be expected from the King; and that the King did mind nothing but Beastliness and the Destruction of his People, and that he did endeavour to establish Arbitrary Government and Popery.* And this is laid to be done by the Prisoner, against the Duty of his Allegiance, the King's Peace, and against the Form of the Statutes in that Case made and provided.

It being demanded of the Prisoner whether he was guilty or not guilty, he said, he had been close Prisoner in the Tower, and ignorant of what he was charg'd with; and renew'd his Instances that he might have a Copy of the Indictment and of the Jury, and that Counsel might be assign'd him to advise with, whether he had not something in Law to plead in Bar to this Indictment; and he desir'd also to know upon what Statute he was indicted.

The Lord Chief Justice acquainted the Prisoner, that the Indictment concluding *contra formam Statuti*. it took in all the Statutes relating to High Treason: That he could not, by Law, demand a Copy of the Indictment, unless some Point of Law arose which he must propound himself, and if the Court thought it fit to be argued, they wou'd assign him Counsel; That he cou'd not have a Copy of the Jury till he plead-ed, because there was yet no Issue join'd where-on a Jury cou'd be impanell'd; and that they cou'd not tell what Notice he had of his Tryal; but if he was but just taken and brought to the Bar, he ought to answer the Charge, and plead presently.

The Prisoner then desir'd he might have his Papers that were taken from him, as he was brought from the Prison into Court; he said they were Papers that concern'd his Defence, some Instructions how he was to manage himself in his Defence, and if they wou'd let him have those Papers he wou'd not take up much of their Time; he desir'd but common Justice, he said, and what was his Right by Law.

The Chief Justice said, they wou'd do him Justice without any Partiality, and that the Bench were to be of Counsel for him, so far as to see that Things proceeded fairly on all Sides; and as to the Papers he mention'd, they wou'd examine them, and if they appear'd to be Papers necessary to his Defence upon his Tryal, he must have them restor'd; but he said he did not understand how he came by those Papers, for no Body cou'd solicit for a Man that was under

The Prisoner himself must propound the Points of Law to be debated before he can demand Counsel.

The Prisoner cannot demand any Notice of Tryal.

The Prisoner's Papers taken from him.

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Criminal for to solicit for one under a Prosecution of High Treason, unless assign'd by the Court.

an Accusation of High Treason, unless he was assign'd so to do by the Court.

Col. Lord have Mercy upon that Man who is so accus'd then; for how is it possible he shou'd make his Defence, if he is not at Liberty to look to it himself, nor any of his Friends are permitted to do it for him: If I had those Papers, I cou'd tell what to plead; but, my Lord, as I am a Freeman of *London*, I conceive, by the Charter of *London*, I am not impleadable out of the Liberties of that City in Pleas of the Crown.

L. C. J. If there be no Treason prov'd against you in *Oxfordshire*, you will be acquitted; but a Freeman of *London* can have no Privilege to commit Treason in *Oxfordshire* but he must be try'd for it there.

Col. *Lilburne* and my Lord *Stafford* had Counsel assign'd them.

Mr. *J. Jones*. Not till they pleaded to the Indictment.

Col. Shall I have my Papers after I have pleaded?

L. C. J. The Court will not capitulate with you.

Col. My Papers tell me I have a Plea in Law to the Indictment, but what it is I can't exactly tell without them.

L. C. J. You are not bound up to Forms, if you propose the Matter never so loosely, if it will avail you, you shall have Counsel assign'd, and Time to draw it up in Form; but till you have propos'd the Matter, that the Court may know whether it be fit to be argu'd, we cannot assign you Counsel if we wou'd; it is not your particular Case, but the common Course of Justice.

Col. If I had my Papers I wou'd answer presently; but I hope I shall not be murder'd, and deny'd what is necessary for my Defence: This Design is not only against me, but against all Protestants.

L. C. J. If we record your Refusal to plead, you will be adjudg'd to stand mute, and Sentence will pass against you.

Col. I

Where the Prisoner has a special Plea, and recites the Purport of it, the Court will assign him Counsel to put it into Form and argue it.
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Where one stands mute in Treason, Sentence may pass on him as a Traitor.

Col. I will not forfeit the Priviledges the Law gives me if I can help it, you shall do what you please with me first; therefore, pray, my Lord, order me my Papers that were taken from me.

L. C. J. They were not taken from you by me.

Col. The Keeper took them from me, under Pretence of bringing them to your Lordship.

L. C. J. I don't know how you came by them: *Aaron Smith*, a common Solicitor, came to me last Night, and desir'd to speak with the Prisoner; but I told him I did not know how any one could solicit or be of Counsel for a Man accus'd of High Treason, till he was assign'd by the Court; for a Defence in Treason ought to be by plain Matters of Proof and Fact, and not by artificial Cavils.

Col. Is it not my Right to have a Copy of the Jury?

L. C. J. That, you have had the Opinion of the Judges in: You have the Liberty of challenging thirty five peremptorily, and as many more as you will, shewing Cause for your Challenges; there are no particular Men design'd for the Jury that we know of, but when you have pleaded we will award the Sheriff to impanel a Jury.

Col. If the Law allows me the Liberty of challenging, it is with an Intention that I should challenge those Persons that I think will not do me Justice; but as they are Strangers to me, and I have no Opportunity of enquiring after them, by my self or others, I may challenge my Friends as well as my Foes.

L. C. J. I hope they will be neither Friends nor Foes; but there can be no Jury awarded till you have pleaded, and Issue is join'd.

Col. Pray, my Lord, order me my Papers, that I may see if I have any Right, or if I have any thing to plead or no; I don't know but the Indictment may mention something of Misdemeanor as well as Treason.

L. C. J.

Obj. To what Purpose does the Law allow Challenges if the Prisoner is depriv'd of all Opportunity of enquiring into the Characters of the Jurors.

Where the Indictment charges the Prisoner with Treason, he can't be found guilty of Misdemeanor.

L. C. J. If they prove no Treason against you, the Jury cannot find you guilty of Misdemeanor here, because you are charg'd with another Crime: In Misdemeanor the Proceedings are in another Manner; in that Offence you have no peremptory Challenges, but you may have Counsel, which is not allow'd to a Prisoner in High Treason.

Col. I don't know what to say without my Papers; I have neither done or spoke Treason; but this is a horrid Conspiracy to take away my Life; nor will it stop here, for it is design'd against all the Protestants in England.

L. C. J. You run out into extravagant Expressions: Who has any Design against your Life? You shall have Liberty to give Evidence of any Contrivance or Conspiracy against you on your Tryal; but the Question is now, If you are guilty or not guilty? And I see no Use your Papers can be to you as to the Plea.

Col. There may be Matter of Law that I might take Advantage of now, which it may be too late to insist upon when I have pleaded.

Mr. J. *Levins*. You are not deny'd any Privilege of an *English* Man: When a Man is indicted for High Treason, he must plead either guilty or not guilty, unless he has Matter of Law to excuse him from that Plea, which he must propound to the Court, and then they will assign him Counsel: And if Matter of Law arises upon the Evidence at the Tryal, the Prisoner may demur to the Evidence, and pray Counsel of the Court to argue that Demurrer; but I think you must plead presently.

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Col. I do not know what are Matters of Law; if I had those Instructions that are in my Papers, I cou'd give a direct Answer presently.

L. C. J. You ought not to have Advice to decline your Tryal.

[Here the Prisoner renewing his Instances for a Copy of the Indictment, and it being again deny'd him, he desir'd it might be read to him again, and it was read to him twice.]

Col. If

Col. If I understand the Indictment, it says there was a Plot by me and others; now, ought they not to shew there was a Plot and Conspiracy, as was done in my Lord *Stafford's* Case, before they go about to prove me guilty of it.

L. C. J. What Method the King's Counsel will proceed in after you have pleaded we can't tell; but you have not pleaded yet: Do not trifle any longer, 'tis a plain Matter, and requires a very short and plain Answer.

Col. Your Lordships are my Counsel as well as my Judges; I desire, therefore, if I have a Right to plead any other Matter, you would declare it.

L. C. J. There does nothing appear to us.

Mr. J. Jones. The Court have all of them declar'd, they know of nothing in Law you have to plead.

Mr. Solicitor. You have heard the Opinion of the Court; you have a Right to propose any other Plea [besides *Not Guilty*] that you can your self; but you have no Right to ask Counsel till you have pleaded.

Mr. Serj. Jefferies. As for Mr. *Colledge's* Solicitor, I would put him in Mind of the Case of the Solicitor, who was indicted of High Treason for soliciting for one who was accus'd of Treason.

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A Solicitor indicted of High Treason for soliciting before he was assign'd.

Col. If you deny me my Counsel and Papers, you deprive me of the Means of coming at my Right, and render me incapable of making any Defence: This is the Man who took my Papers from me, [pointing to him] let him be commanded to return them; he said, he had Orders to take them from me, and bring them to your Lordship.

L. C. J. Your Papers are of no Use in Pleading Guilty or not Guilty?

Mr. Serj. Jefferies. Let him plead Guilty or not Guilty, or offer some Matter of Law to the Court fit to be debated, or we must desire your Lordship's Judgment.

Col. Pray, my Lord, order the Man to return me my Papers.

L. C. J.

L. C. J. Perhaps he was a Criminal that gave them to you first; but when you have pleaded, we will hear what you have to move about them.

Col. Possibly I may plead the Words were spoken in another Place.

L. C. J. If there be no Treason prov'd in Oxfordshire you will be acquitted.

Col. My Lord, I am indicted by the Name of a Carpenter, but I am a Joiner.

L. C. J. I know no Difference between a Carpenter and Joiner in Law.

Mr. J. Jones. They might have indicted you by the Name of Labourer if they wou'd.

Clerk of the Crown. Are you Guilty, or not Guilty?

Col. Shall there be no Advantage taken against me, if I do plead so?

L. C. J. We shall make no Bargains with you?

Col. If you are my Counsel then, have I any Plea in Law to make?

L. C. J. We know of none, but Guilty or not Guilty.

Col. Then if you do force me upon this Plea, and it cost me my Life, at your Doors let it be.

Clerk of the Crown. Are you Guilty, or not Guilty?

Col. I am not Guilty, in Manner and Form, as it is laid in this Indictment.

L. C. J. Now he has pleaded, Mr. Attorney, if there be any thing in those Papers necessary for his Defence, it will be hard to deny him them.

Mr. Attorney. When he came to Prison he had no Papers; but I'm inform'd Aaron Smith deliver'd them to him.

Col. He receiv'd them from me in the Tower.

Mr. Attorney. What were the Papers you deliver'd him at the Tower?

Col. There are Directions how to govern my self in my Defence, and Instructions to tell me what the Law allows me.

Mr. Attorney. My Lord, there are abundance of Niceties propos'd for him to move, and it will

will be strange if Men shall be allow'd to espouse the Cause of Traitors at this rate.

Col. I am no Traitor.

Mr. Attorney. You are indicted of High Treason.

Col. Ay, by a Grand Jury made up that Morning.

Mr. Attorney. My Lord, here is a List of the Men return'd to serve on the Jury, with Marks set upon them, who are good Men, who bad, and who moderate Men; I hope he shall not have that Paper.

L. C. J. I wou'd have those Papers put into some safe Hands, that they may not on the one Hand be carry'd away and stifled, and that the Prisoner, on the other Hand, may have Recourse to such of them as are proper for his Defence.

Mr. Attorney. But, my Lord, I understand that there are several People who go up and down to procure Witnesses against the King's Evidence, making it a publick Cause; and here is a List of the Witnesses they have pick'd up.

L. C. J. He must have that; deliver it to him presently.

Mr. Serj. Jefferies. Before the Prisoner makes Use of any Papers that have been brought him against the King's Witnesses, we desire to know what the Purport of them is, and who gave them to him.

L. C. J. Let us have no Heat till the Tryal is over, Brother, and then, if any Thing requires our Examination; it may be fit to consider it; but in the mean while, what Hurt is there if the Papers be put into some trusty Hands, that the Prisoner may make the best Use of them he can.

Mr. Attorney. This is the same Thing as to assign him Counsel, if his busy Solicitor shall procure the Advice of Counsel, and then communicate it to him.

Col. If you take away all my Helps, you may as well condemn me without a Tryal.

Mr. Attorney. you are not to have Helps to plead dilatory Pleas: My Lord, I pray you Lord-

ship's Judgment about the Papers when you have perus'd them.

Then the Judges look'd over a Paper call'd the Speech.

The Court peruse
the Papers that
were taken from
the Prisoner.

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L. C. J. We have seen enough of this to suppress it, and enquire how it came to his Hands.

Mr. Attorney. Here is another, reflecting on the Justice of the Nation: Call *Aaron Smith* and *Henry Starkey*.

Aaron Smith appear'd.

Mr. Attorney. Did you deliver these two Papers to the Prisoner?

Smith. No Body is to accuse himself, I desire Proof may be made of it.

L. C. J. We will not interrupt the Tryal; take a Recognizance of Mr. *Smith*, to be forth coming during this Sessions.

Smith. I shall not depart, I hope Mr. Attorney will take my Word.

Mr. Attorney. Indeed I shan't; when I gave you Leave to go to the Prison, I did not think you would have abus'd my Kindness by giving the Prisoner Papers.

L. C. J. Well, take his Recognizance.

Smith. 'Tis high Time to have a Care, when our Lives, and Estates, and all, are beset here.

L. C. J. What do you mean by that?

Smith. I did not mean any Reflection upon the Court; but I have been threaten'd since I came to Town, tho' I have not said one Word in publick Company.

Mr. J. *Jones*. You reflect here in the Face of the Court and the County, upon the Government and the Justice of the Nation.

Smith. No, my Lord, I have explain'd what I meant.

Col. Will you not let me have the Use of my Papers now you have perus'd them?

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Mr. J. *Jones*. The Speech is a seditious Libel upon the Government; we don't think fit to let you have the Use of that Paper.

One accus'd of
Treason may not
receive any in-
structions from
his Counsel, &c.
either in Writing
or outwile.

L. C. J. That which contains the Names of the Witnesses you have; and as for the Instructions in Point of Law, had they been written in your own Name, in the first Person, you might have

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have had them ; but when they appear to us to be wrote by another, and tell you, you must do so and so, this were to allow you Counsel in an indirect Way, which the Law does not give you directly ; tho', for my Part, I had rather he thou'd have too much than too little.

Col. My Lord, Some of those Things I transcrib'd out of Books my self, and I don't know that Mr. Smith wrote, one of them : I hope your Lordship will order me my Papers.

L. C. J. You shall have a Copy of the Paper of Instructions, leaving out what is scandalous.

[The Court having taken a Recognizance of 100 l. of Mr Smith, and order'd Mr. Starkey, another of the Prisoner's Solicitors, to attend, for saying the Prisoner was hardly dealt with, in that his Counsel were not suffer'd to come at him, and offering the Jaylor four Guineas to do him what Favour he cou'd, They order'd the Paper of Instructions to be lodg'd in the Hands of the Sheriff's Son, for the Prisoner to peruse, and Adjourn'd till the Afternoon.

The Prisoner's Papers are lodg'd in the Hands of the Sheriff's Son, for the Prisoner to have Recourse to.

In the Afternoon, the Court being set, the Panel was call'd over, and the Prisoner having challeng'd several, at length the following Jury was sworn.

Henry Standard,
William Bigg,
Robert Bird,
John Shorter,
William Windlow,
Charles Hobbs,

Roger Browne,
Timothy Doyley,
Ralph Wallis,
John Benson,
John Piercy,
John Lawrence.

The Jury being charg'd with the Prisoner, Mr. North open'd the Indictment, and Mr. Attorney open'd the Evidence, but receiv'd some Interruption from the Prisoner, who complain'd he open'd some Things to prejudice the Jury against him, which cou'd not be prov'd.

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Then the King's Counsel proceeded to call their Witnesses, and first, Mr. Dugdale, who was a Witness against my Lord Stafford, and whom Colledge

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attested, at that Tryal, to be an honest good Man.

Mr. Dugdale was sworn.

The Witnesses
examin'd apart.

Dugdale's Evi-
dence of some
scandalous Expre-
ssions the Prisoner
had been guilty
of towards his
Majesty.

The Prisoner desir'd the Witnesses might be examin'd apart, which was granted by the Court.

Then Mr. Dugdale depos'd, That he had been acquainted with the Prisoner about two Years, and that at some Times he seem'd mightily bent against Popery, and wou'd say, because the King did not prosecute Papiists according to his Mind, *That the King was a Papiist himself, and as deep in the Plot as any of them all, and that he had a Hand in Sir E. Godfrey's Death;* and that he told the Deponent at Oxford, *There was nothing to be expected from the King, but the introducing of Popery and arbitrary Government.*

Col. Where was this spoke?

Dugd. At Combe's Coffee-House in this Town, and at the Angel-Inn here, in the Barber's Shop; we were in that Shop that Day the King went out of Town.

Witnesses not to
be cross examin'd
till they have gone
through their Tes-
timony.

L. C. J. You must not interrupt the King's Witness while he is giving his Evidence, but when he has deliver'd his Testimony you may ask him any Questions; and in the mean Time you may have Pen and Ink to help your Memory.

Dugd. Presently after the King went out of Town, we went into the Barber's Shop, which is just within the Angel-Inn, and as you were charging your Pistols, you said, *Rowley is gone,* the Rogue was afraid of himself and has shirk'd away'd.

Mr. Solicitor. Who did he mean by Rowley?

Page 773.
Dugdale's Evi-
dence of the in-
tended Rising at
Oxford.

Dugd. It was his common Word for the King: And he has told me at other Times, there was no Trust to be put in the King; it was the People we must trust to, and we must look to arm our selves; and he said, he wou'd arm himself, and be here at Oxford; and he told me, in this Town accordingly, that he had several stout Men that wou'd stand by him in it: Their Intention was, he said, to root out Popery, by which he always meant the establish'd Church: And when Dr. Tongue was at his House, he said, he was forc'd

to

to be at great Charges and neglect his Business to keep him in Order, for if he had not, he said, the Rogue had a Mind to fling all upon the Protestants, that is, the Dissenters; for he did not count the Church of *England* so.

Mr. Attorney. Who were to be concern'd with him in that Design of his?

Dugd. He said he brought Captain *Chinton*, Captain *Browne*, and Dr. *Lewis* to Town with him, expecting there wou'd be a Rising: I think he told me this here, the *Friday* after the Parliament fate.

Mr. Jones. What Use did he say he wou'd make of them?

Dugd. For the Defence of the Protestant Religion against the King and all his Adherents.

Mr. Jones. What did he say, if the King did not yield to the Parliament?

Dugd. He said, if he did not yield to the Parliament, he shou'd be forc'd to it; I heard him say this at *Oxford*.

Mr. Serj. *Holloway*. Did you hear him say the same in *London*?

Dugd. Yes, he said he expected there wou'd be something done at *Oxford*, and he wou'd go thither with his Horse and Arms, and the Gentlemen I mention'd wou'd go with him: And he said, let them begin when they wou'd, he did not care how soon, his Party was the greatest Party.

Mr. Attorney. Did you know Captain *Brown*?

Dugd. Yes, he frequented the Prisoner's Company much, he was in the late Army against the King.

Mr. Serj. *Jefferies*. Did you see him have any Pistols?

Dugd. Yes, I saw him have Pistols in the House at *Oxford*.

Mr. Attorney. Do you know of his delivering any Marks or Signs for the People to be distinguish'd by?

Dugd. He gave me, at *London*, as much Ribbon as came to 40*s*. with *No Popery, no Slavery*, wrought in it, to distribute among our Friends,

The TRIAL of

the Dissenters, in the Country, that they might know one another.

Mr. Jones. Did you agree to come to Oxford with the Prisoner?

Dugd. Yes, I promis'd him to come, and did so: And being once at a Coffee-House in London with Mr. Colledge and some Members of Parliament, a little before they met at Oxford, and talking of some Disturbance that might happen here, it was agreed, that in every County where the Parliament had the best Interest a Member shou'd be left to manage the People.

Mr. Attorney. What do you know of any Pictures or Papers?

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Dugd. I have about me the Letter pretended to be interrupted to Roger L'Estrange; I receiv'd it of the Prisoner, and he told me he was the Author of it, and he shew'd me it in MS. before it was printed, and told me he got Curtis and his Wife to print it, but wou'd trust them no more, for they cheated him of the Gain.

L. C. J. What is it, Mr. Attorney?

Mr. Attorney. It is a Letter; and a great Part of Fitz-Harris's Libel is taken out of it. Did he disperse them?

Dugd. Yes, there were some given to Mr. Bosson and Mr. Baldwin.

Here the Paper was read.

Mr. Attorney. What other Libels did he deliver you?

Rary-show explain'd.

Dugd. I receiv'd one like this, where all the Bishops are changing their Hats for Cardinal's Caps: It is call'd Rary-show; (here he produc'd it) I heard Colledge sing it in Oxford Town, and at my Lord Lovelace's, in the Country, where Sir Robert Clayton, Sir Thomas Player, and Mr. Rouse, were in Company.

Mr. Serj. Jefferies. How came you there?

Dugd. Sir Thomas Player invited me.

Mr. Serj. Jefferies. Where is it, in Oxfordshire?

Dugd. I can't tell, 'tis four Miles from Henley, and my Lord was at Home then.

L. C. J. My Lord Lovelace is here himself, and hears what he says.

Mr. Serj.

Mr. Serj. *Jefferies*. Did he shew you this Cut?

Dugd. Yes, and he said he made it, and sung it before it was printed; and soon after it was printed he gave me one, and we sung it together.

Mr. Attorney. How did he describe it to you?

Dugd. The Figure with the Pack, he said, was the King, and those that follow'd him were *Top-kam, Cooner, Hughs, and Snow*.

Serj. *Ho*! What was meant by the Pack?

Dugd. The Parliament and all the King's Retinue. And then here is the King in the Mire again:

Mr. Serj. *Jefferies*. Yes, and here are the Bishops whom they thrust into the Pack when they have got him down in the Mire, and then they hoot them all away, as it is in the Song.

L. C. J. Did he explain it thus to you?

Dugd. Yes, he did, at *London*. They all were the King and the Clergy; and *Louse-Hall*, he said, was *White-Hall*, because of its Poverty.

Here the Ballad was read.

Clerk of the Crown. *Rary-show*, to the Tune of *I am a Senseless Thing*.

Mr. Serj. *Jefferies*. What did he mean by the two Faces?

Dugd. That the King was half Protestant half Papist: And he said the King's Party was but a small Party to theirs, [*the Dissenters*.]

L. C. J. Tell us the Words he said.

Dugd. When he found the King wou'd not yield to the Demands of the Commons at *Oxford*, he said, Let him begin as soon as he wou'd, he did not care, for their Party (meaning the King and his Party) was but a Handful to him and his Party, who, he said, were the true Protestants; the others were but Protestants in Masquerade; and hop'd I wou'd be true to his Side, and desir'd me to get good Arms for my self.

Mr. Solicitor. For what Purpose did he desire you to arm your self?

Dugd. He said, the King had a Design to introduce Popery and arbitraty Power; and he expected when they wou'd begin; and the sooner

The TRIAL of

the better, he wou'd be provided for them: He said this both at *Oxford* and *London*.

Mr. Jones. Did he tell you Captain Browne, &c. were there?

Dugd. He told me at *London* they were intended to come down, and he told me at *Oxford* that the Captain and about forty were come down.

Mr. Jones. Was you in their Company here?

Dugd. I was with Captain Brown, Don Lewes, and several others of that Gang; I know their Faces tho' I don't know their Names.

Mr. Solicitor, To what Purpose were they to come?

Dugd. Colledge expected a Rising at *Oxford*, and he was one who debated it at *Richard's* Coffee-House in *London*, whether it was not best to leave a Parliament Man in every County; and their Resolution was to be carry'd from thence to the *King's Head* Club: And, my Lord, the Day the Sheriffs were chosen, he shew'd me a Libel, and told me the Prisoner dare not print it, it was so dangerous; it was the worst against the King and Government I ever heard.

Col. Pray, when did you first give this Evidence?

Dugd. I think in *June*, about the Time you was taken; I gave it before Sir *Lionel Jenkins*.

Col. Where did you swear these Things were done then?

Dugd. The same Words were said in *London* that were spoke here. In this Evidence I have confin'd my self chiefly to what was said here, for there was more said in *London* than here.

Col. Did not you swear, at your Examination, that what you now say was spoken at *Oxford*, was spoken in *London*?

Dugd. I did not name *Oxford* then, and the Truth is, you spoke them both at *London* and here.

Col. What are you to have for giving this Evidence?

Dugd. I was never promis'd or receiv'd any Thing but the Charges the King allow'd me for my Journey into the Country,

Mr. Serj.

Mr. Serj. *Jefferies*. Have you any other Allowance than you had when you was Evidence against the Lord *Stafford*?

Dugd. No, nor I have not got all that yet.

Col. Pray, observe my Question, Did not you swear I spoke these Words at *London*, which you swear now I spoke here?

L. C. J. He tells you what pass'd both at *London* and *Oxford*; and I must inform you, that if Treason be committed in two Counties, the King may choose which County he will prosecute in, and give in Evidence the Facts in both Counties; indeed, if nothing was said or done at *Oxford*, your Objection wou'd deserve our Consideration.

Col. My Lord, in his Oath before Sir *Lionel Jenkins*, about the Design of seizing the King, and the Party I had, and the Arms I provided, he did swear, that I said those Words to him in *London*; but the Grand Jury there were so wise and honest as to do me Justice, and wou'd not find the Bill: So their Design failing there, they chang'd the Scene to *Oxford*.

The London Grand Jury refuse to find the Bill against Colledge.

Dugd. He said the same Things to me at my Lord *Lovelace's* as we lay in Bed together.

Col. What did I say?

Dugd. That the King was a Papist, and design'd arbitrary Government. We had an Hour's Discourse in the Morning as we lay a-Bed, about the Parliament and King.

Col. Where did I say the Words, in *Oxford*, and who was by?

Dugd. You said them at *Combes's* Coffee-House when no Body was by; but at the *Angel-Inn* when you spoke them there were several; and I'm sure there were many by at *London*, particularly Mr. *Starkey*, Mr. *Boson*, and Mr. *Baldwin*, and we all rebuk'd you.

Col. What Arms did you see me have here in *Oxford*?

Dugd. You had a Case of Pistols before you, and some Pocket Pistols.

Col. I don't deny my having Pistols in my Holsters; but as for Pocket Pistols I had but one, and that was his own.

Mr. Serj.

Mr. Serj. *Jefferies*. A Chissel might have been as proper for a Joiner.

Col. You say I confederated with Captain *Browne*, &c.

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Dugd. You told me *Browne* had a good Allowance, and you would speak that he might have a better, for he was able to do good Service when the Time came.

Col. From whom was this Allowance?

Dugd. Among You: you know there were several Gatherings that I was privy to, tho' you did not tell me how it was to be distributed.

Col. Did I tell you there were any Gatherings for Captain *Brown*?

Mr. Serj. *Jefferies*. He says, you told him no Particulars.

Col. Pray, Sir *George*, don't interrupt me; I am for my Life.

Dugd. I don't say for him, or for whom, you distributed it; but you gather'd Money one among another, and you have paid Money.

Col. When, and to whom have I paid Money?

Mr. Attorney. You confess'd, at your Examination, you gave a Guinea.

Col. Were you in my Company at *Oxford* any where but at the Coffee-House and the *Angel-Inn*?

Dugd. I was with you at the *Chequer*.

Col. In what Room, was it above Stairs or below?

Dugd. I can't tell all the Rooms in that House, but it was both above Stairs and below. I was two Days with you there.

Col. Then it must be *Saturday*, *Sunday*, or *Monday*; for you were at *Oxford* but those three Days.

Dugd. Nay, I came to *Oxford* either *Wednesday* Night or *Thursday* Morning, and saw Mr. *Hunt* and you together the same Day I came.

Col. Did I explain any Pictures to you at *London*, or own I was the Author of them?

Dugd. Yes, upon my Oath. And there is one I have not shewn yet, (*viz.*) *A Character of a Papish Successor*, &c.

Serj. *Hol.* How did he explain that to you?

Dugd.

The Picture call'd
The Papish Successor
is explain'd.

Dugd. These are a Parcel of *Tantivy* Men riding to *Rome*, and here's the Duke of *York*; half Man half Devil, trumpeting before them.

Col. You have got some Body to explain these Things to you.

Dugd. You did, upon my Oath.

Col. Oh fie! Mr. *Dugdale*, consider what you say.

Dugd. And in one Place, in the *Rary-show*, it was, in MS. *Now, now the Rogue is down*; but it is another Name in the Print.

Mr. Serj. Jefferies. It is, *Now, now the Giant is down*, here.

Col. Is the Song I sung at my Lord *Lovelace's* the same with this?

Dugd. Generally it is, I can't say Word for Word; but you sung it half a dozen Times, and the Musick play'd to you.

Col. Was any Body by at my explaining these Pictures?

Dugd. Yes, Mr. *Baldwin*, and he reprov'd you for being so open.

Mr. Attorney. Did not *Colledge* endeavour to establish your Credit at my Lord *Stafford's* Tryal?

Col. I acknowledge I was sworn at that Tryal, but what I said then was by Hearsay; I knew nothing of my own Knowledge of him, but I did believe him another Man than I find him.

Mr. Serj. Jefferies. No doubt of it, or you wou'd not have trusted him.

Mr. Stevens was sworn.

He depos'd, That, by Order of Council, he and Mr. *Atterbury* search'd the Prisoner's House, and found the Original of the *Rary-Show* in his Bed-Chamber, and also those that were printed.

Atterbury was call'd.

He depos'd, They found the Original, drawn with a Pencil on *Dutch Paper*, on the Table in *Colledge's* Chamber; but that they had lost it, and could not produce it in Court.

Col. I am sure you could not find the Original of any such Thing in my House.

Mr. *Sewell*

Mr. *Swell* was sworn.

He depos'd, That they found the Papers he produc'd in Court in a Bag, in the Possession of *Colledge's* Wife.

Mr. *John Smith* was sworn.

John Smith's Evidence of the intended Insurrection at Oxford.

He depos'd, That he ~~was~~ intimately acquainted with *Colledge*, the Prisoner; and that meeting him once at a Coffee-house by *Temple-bar*, *Colledge* told him he was invited to Dinner with Alderman *Wilcox*, and desir'd the Deponent wou'd go with him; and said, he wou'd be welcome: That as they were going, the Deponent ask'd what the Alderman was? and *Colledge* said, he was as true as Steel, and was a Man that wou'd endeavour to root out Popery: That the Deponent answering, That may easily be done, if you can prevail with the King to pass the Bill against the Duke of *York*: *Colledge* reply'd, No, you are mistaken, *Rowley* [The King] is as great a Papist as the Duke of *York*, and every Way as dangerous to the Protestant Interest, as is too apparent by his arbitrary Ruling: That when they came to the Place where they were to dine, the Alderman not being come, the Deponent ask'd, What kind of Man he was? And *Colledge* said, he was one that liv'd at his Country House, and gave freely to several People to buy Arms and Ammunition, in order to bring the King to a Submission to his People; adding, He wonder'd Old *Rowley* did not consider how easily his Father's Head came to the Block, which he doubted not wou'd be the End of *Rowley* at the last: That after they had din'd, *Colledge* ask'd the Deponent to go to his House and see how he was provided with Arms; and that at another Time he din'd with *Colledge*, who shew'd him his Pistols, Blunderbuss, and Great Sword, and his Armour, Back, Breast, and Head-Piece, and said, These are the Things which will destroy the pitiful Guards of *Rowley*, which are kept contrary to Law and Justice, to set up Arbitrary Power and Popery.

That a little before the Parliament met at Oxford, *Colledge* and the Deponent were discoursing what Preparations the City were making, and how

how they were provided with Powder and Bullets; and *Colledge* said, for his Part, he wou'd go down to *Oxford*, for he expected a little Sport there upon the Divisions that were like to be between the King and Parliament; and *Colledge* added, *We expect the King will seize on some of the Members, and we are as ready as he; and, for my Part, I will be there, and be one that shall seize him, if he secure any of the Members.*

Colledge's Apprehensions that the King would seize some of the Members at Oxford.

That after *Colledge* came up again, he told the Deponent he went down in Expectation of some Sport, but Old *Rowley* was afraid, like his Grandfather *Jamy*, and so ran away like to beslit himself. And at another Time *Colledge* told him, that *Fitz-Gerald* and he had a Quarrel at the Door of the House of Lords at *Oxford*; and that *Fitz-Gerald* call'd him Rogue, and made his Nose bleed; but he said, before long, he hoped to see a great deal more Blood shed for the Cause: And when there was a Discourse of my Lord *Feversham's* disarming the City, *Colledge* said, he was well provided; and if *Feversham*, or any Man, nay *Rowley* himself, shou'd attempt any such Thing, he wou'd be the Death of him, before any Man shou'd seize upon his Arms.

Serj. Jefferies. Did he desire you to provide Arms for yourself?

Smith. He desir'd me to get Arms; for he said I did not know how soon I might make Use of them; and I had Armour from him, but it being too big, I return'd it him, and bought New: He did not say to what Purpose we must arm.

Mr. Attorney. What did he say about seizing the King?

Smith. He said the Parliament had agreed to secure the King, and in order to it, the Parliament-men were to come arm'd with their Men.

Col. What Religion are you off?

Smith. Shall this Man ask me such a Question, my Lord?

L. C. J. Answer him.

Smith. I am a Protestant, and in Orders.

Col. You were a Priest, and had your Orders from the Church of *Rome*.

Smith

Smith. And that is a good Ordination : I came in voluntarily, and discover'd the Popish-Plot, and have receiv'd no Pension or Salary from the King, but spent my own Money, and was the Darling of the City, while I did what they would have me do.

Mr. Attorney. Were not you a Witness at my Lord *Stafford's* Tryal?

Smith. I gave a general Account of the Design of the Papists; and my Reputation was not then question'd.

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Col. I don't know one Word of what he testifies against me; nor can I distinguish the Times he says we had those several Discourses: He is the falsest Man that ever spoke with a Tongue.

Bryan. *Haynes* was sworn.

Mr. Attorney. Tell the Court what Discourse you have had with the Prisoner.

Haynes deposes, that the Whigs intended to call King *Charles* the 2d to Account as they did his Father.

Haynes. I have been acquainted with him ever since *March* last, before the Sitting of the Parliament at *Oxford*; there being a Warrant out against me, I apply'd myself to *Mr. Colledge*, who promis'd to advise with a Person of Honour to know whether it might not be superseded; and the next Day, when I came to him to know the Result, he bid me be of good Cheer, for the Parliament would sit at *Oxford* soon, and I need not value the King of a Pin; for, *says he*, He is in a worse Condition than you or I, and you shall see him call'd to an Account for his Actions: The World sees he resolves to bring in Arbitrary Power and Popery, and unless he lets the Parliament sit at *Oxford*, we will seize him there, and bring him to the Block, as we did the Loggerhead his Father: The Parliament shall sit at *Guildhall*, and redress the Subjects Grievances: And you shall see, that no King of his Race shall ever reign in *England* after him.

L. C. J. Where was this he said so?

Haynes. I walk'd with him from his own House by *Bridewell*, to the *Hercules* Pillars, and we went up Stairs, and there we had all this Discourse: And when I ask'd how this was possible, tho' the Duke of *Monmouth* was a fine Prince, and stood up for

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for the Protestant Interest, as they pretended; and *Colledge* answer'd, We make but an Idol of him to cover our real Design: Do you think the wise People of *England* will ever make a Bastard upon Record King of *England*? No, tho' we praise his Actions, we can't endure him, because he is against his own Father; but unless the King expel from his Council the Earl of *Clarendon*, the cunning *Lory Hyde*, and the Earl of *Halifax*, that great Turn-coat Rogue, who was once so much against the Papists, we shall make *England* too hot for him.

Col. Pray, how is this possible?

Haynes. You knew my Condition, and I had intimated that I was as much for Treason and Villainy as you, at that Time; and when I objected there was no Preparations equal to such a Design, and that the Gentlemen would hardly quit their Ease for a Civil-War, says he, You are mistaken, we have 1500 Barrels of Powder in the City, and 100,000 Men ready at an Hour's Warning; and we have prepar'd every Thing against the Sitting of the Parliament at *Oxford*; and you shall see *England* the most glorious Nation in the World, when we have cut off that beastly Fellow *Rowley*; and he added, The King came of a Race of Buggers, for his Grandfather, King *James*, bugger'd the old Duke of *Buckingham*. Then he rail'd at Judge *Pemberton*, and said, let him try *Fitz-Harris* if he dare, I shall see him go to *Tylurn* for it, I hope, a Turncoat Rogue. And another Time he put me upon charging the King with firing the City before some Company, and the Murder of Sir *E. Godfrey*: And as we were talking of *Fitz-Harris's* Libel, he said, 'The Devil take me, every individual Word is as true as God is in Heaven; and if you don't join with *Fitz-Harris*, and charge the King home, you are a base Fellow; for he makes you Slaves and Beggars; and 'tis Charity to charge him home, that we may be rid of such a Tyrant.'

Serj. Jefferies. Mr. College, You may ask him any Questions.

Col. Certainly, my Lord, the Thing speaks it; he is not to be talk'd withal. Is it probable I shou'd talk to an *Irishman*, that does not understand Sense?

Haynes. 'Tis better to be an honest *Irishman* than an *English* Rogue.

Col. Did you ever see me before last *March*, when you say this Discourse was about superseding the Warrant?

Haynes. I had no Intimacy with you, but I had seen you in Coffee-houses bawling against the Government.

Col. Then this was the first Time you discours'd with me?

Haynes. No, once you set me to quarrel with one at the *Queen's-Head* at *Temple-bar*, and you were with me the Night before with Capt. *Browne*, and they gave us a blue Ribbon, to distinguish we were Protestants from Bishops-Men, which we were to use when the King was seiz'd.——And when *Colledge* return'd from *Oxford*, I told him, the King had made a Fool of them; and he answer'd, they had not done with him yet: That no Body did suspect he wou'd dissolve the Parliament that Day he did; and that he took Coach and went away before the Parliament cou'd get down, otherwise they had been too hard for him; for there was never a Parliament Man, but had divers armed Men to wait on him; and, *says he*, I had my Blunderbuss and my Man to wait on me, but there is a God above will rule all.

Page 782.

Col. When was the first Time I talk'd with you?

Haynes. I told you before.

L. C. J. Tell him when was the first Time you came acquainted with him.

Haynes. In *April* last.

Col. You said it was before the Sitting of the Parliament, which was in *March*.

Haynes. I meant in *March*.

Col. Then, Gentlemen, pray consider whether it is probable I shou'd discourse with him at that Time in this Manner: You say I desir'd you to make an Affidavit about *Fitz-Gerald*, Was it before

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or after, I had this treasonable Discourse with you?

Haynes. After the Affidavit, when we went to the *Hercules* Pillars, about a Week after.

Mr. Attorney. Did he deliver you a Ribbon, as a Mark of Distinction?

Haynes. Yes: Here it is. [*And he shew'd it in Court.*]

Mr. *Turberville* was sworn.

Serj. *Jefferies.* Pray acquaint the Court what Discourse you have had with Mr. *Colledge*.

Turberville's Evidence of the Design to seize the King at Oxford.

Turberville. About the Middle of that Week the Parliament sat at *Oxford*, I din'd with Mr. *Colledge*, Capt. *Browne*, and *Don Lewes*, at the *Chequer* Inn here; and after Dinner, *Don Lewes* being gone out, and *Brown* asleep on the Bed, *Colledge* and I fell discoursing of the Times; and I said, I thought the Parliament was not a long-liv'd Parliament; and *Colledge* reply'd, There is no Good to be expected from the King, he and all his Family were Papists, and had ever been such. Says I, Perhaps the King will surprize the Parliament, or use some Stratagem to bring them to his Terms; and *Colledge* answer'd, I wou'd he wou'd begin; but if he does not, we will secure him 'till he comes to those Terms we wou'd have from him; for here are several brave Fellows about this Town, and many more are coming, that will join in it: And he said, he had got a Case of Pistols, and a very good Sword, and I believe he had Armour on, but I can't be positive.

Mr. Attorney. Did he tell you he came down on Purpose to seize the King?

Turberville. Yes, and gave me a Piece of blue Ribbon to put in my Hat to distinguish us, if there shou'd be any Disturbance; and when I told him I had never a Horse, and nothing but a Case of Pistols, he bid me not trouble myself, for he wou'd get me a Horse.

Page 783.

Col. What to do?

Turberville. He said, there was a Design to seize the King?

Mr. Attorney. Did he desire you to be one?

Turberville. He desir'd me to be ready to assist.

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Ff

Mr. Jones

Mr. Jones. How much Ribbond had he?

Turberville. Forty or fifty Yards.

Col. Did I speak of any Body that was to join with me?

Turberville. You did not name any Body to me; but Capt. Brown was with you.

Col. Pray, how came I to talk Treason to you; was any Body by?

Turberville. No, Capt. Brown was gone to Sleep, and Lewis was gone out.

Col. God forgive you, I never held any such Discourse in my Life: Pray, when did you give in this Information against me?

Turberville. I believe a Day or two before I came to Oxford.

Col. Why did you do it then and not before?

Turberville. Mr. Dugdale told me, the Grand Jury of London wou'd not find the Bill, which I wonder'd at; for every one that convers'd with him, might have been an Evidence against him, he was so lavish of his Tongue against the King and Government; so Col. Warcup came and took my Examination.

Serj. Jefferies. My Lord, Here is one Mr. Masters, whom Mr. Colledge will allow to be a Man of undoubted Reputation, I desire he may give the Jury an Account of the Prisoner.

Mr. Masters was sworn.

Serj. Jefferies. Pray tell the Court what Discourse you had with the Prisoner?

Mr. Masters. I have been many Years acquainted with Mr. Colledge, and have often reprov'd him for being so violent; but a little before the Parliament at Oxford, we were discoursing of the Government, and he justify'd the Actions of the long Parliament in 40: And I ask'd him how he cou'd have the Impudence to justify their Proceedings, who rais'd that Rebellion against the King, and cut off his Head? And Colledge answer'd, They did nothing but what they had just Cause for; and the Parliament that sate last at Westminster, was of the same Opinion.— And the 13th of May afterwards, when the Common-Council met at Guildhall, seeing him there, said I, Col. Colledge, What

Masters's Evidence of Colledge's justifying the Parliament of 40.
Page 704.

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What do you make all this Bustle for? and he answer'd, Marry, mock not, I may be a Colonel in a little Time.

Sir William Jennings was sworn.

Mr. Jones. What do you know concerning Mr. Colledge at Oxford?

Sir W. Jennings. I had no Knowledge of Mr. Colledge before he came down to Oxford, otherwise than as I had seen him in a publick Coffee-house: But when I was at Oxford, observing several People looking at a Picture, I crowded in among the rest; and after the Crowd was over, Mr. Colledge took a Picture out of his Pocket, and said he wou'd give me one, which I accepted: There was written *Mac-a-top* on it, and several Figures were on it: [*Here a Picture was shewn him, which he said was the same.*] And shewing it to Justice Warcup,

he bid me give it him, and so I did.—— Another Time I saw Mr. Colledge bring a Parcel of blue Ribbons into a Coffee-house, with these Words wrought twice in every Quarter of a Yard, (*viz.*) *No Popery, No Slavery*; and I saw him sell a Yard of it for two Shillings, to one whom I took to be a Member of Parliament, and the Gentleman took it and ty'd it upon his Sword.——

Ribbons with, No
Popery, no Slavery,
worn by the
Whigs.

What I have farther to say is, that the Day the Parliament was dissolv'd, as I was standing in the School-Yard, Mr. Colledge came up to me, and told me he had been in a Quarrel; Mr. Fitzgerald had spit in his Face, and he spit in his Face again, and so they went to Loggerheads. Says I, Mr. Colledge, your Nose bleeds; and he answer'd, *I have lost the first Blood in the Cause, but it will not be long before more be lost.* When I came to London afterwards, I met him in Fleetstreet on a Sunday: How now, honest Joyner? said I. Says he, You call me honest Joyner, but some call me Rogue and Rascal; but I have been beating some of them that I believe will be aware of it; and I observ'd to Capt. Crescer, who was with me, that I never met this Man but he had been in some Quarrel.

Col. Sir William, you are a Gentleman, and have a Regard to your Word and Honour; as for the other Witnesses, they don't care what they

say; nor am I much concern'd about it. Pray will you recollect yourself? I was vindicating the Commons and Doctor Ores, whom *Fitz-Gerald* had abus'd, and upon that the Quarrel began; so when I met you, and you told me my Nose bled, I said, *I have lost the first Blood for the Parliament, I wish it may be the last.* Were not these the Words?

Sir *W. Jennings*. I have said before as I do now, that I had rather have serv'd the King in three Engagements, than have come hither against you, or any Man, upon this Occasion; nor have I any Prejudice against you, but, to the best of my Memory, the Words were as I spoke them at first, and nothing of the Parliament mention'd: And having told Justice *Warcup* this Story, I am brought hither to attest it.

Serj. *Holles*. We have concluded our Evidence for the present, 'till we see what the Prisoner says to it.

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L. C. J. Then, Mr. *Colledge*, you may say what you will in your Defence, and call your Witnesses.

Colledge's Defence.

Col. My Lord, The Jurisdiction against me, is for treasonable Practices and a Conspiracy; I desire to know if there be any Conspiracy prov'd; or any Thing but what they say, *I said?*

L. C. J. If the Witnesses speak true, there is plain Proof of a Conspiracy: As your publishing Libels and Pictures to make the King odious and contemptible in the Eyes of the People, and being the Author of them; and your preparing Arms, and shewing them to *Smith*; and saying, you wou'd go to *Oxford*, and if there shou'd be a Disturbance there, you wou'd secure the King; and you did come to *Oxford* accordingly; and you hear what *Dugdale* and *Turberville* say you said and did there: Now this is a strong Evidence against you; for an Endeavour to seize the King's Person has been always held to be Treason, by the 25th of *Ed. III.* for Kings are never made Prisoners, but in order to their Death: And the Statute of the 13th of this King, is stronger against you; for that says, If a Man shall, by any Words, or malicious Speaking, shew the Imagination of his Heart,

Heart, that he hath such Intention, that is Treason too.

Col. I wou'd know if there be sufficient Matter to ground this Indictment upon? For one swears what was done in one Place, and the other in another: And I wou'd ask your Lordship, if there ought not to be two Witnesses to the same Words spoken at the same Time.

L. C. J. It hath been often resolv'd, that if there be one Witness to prove one Fact, and another to another Fact, which is an Evidence of the same Treason, tho' there be but a single Witness to each Fact, they are two Witnesses sufficient to support the Indictment, as was held in my Lord *Stafford's* Case: And farther, If one Witness proves what was said in *Oxford*, and another proves what was said in *London*, if they relate to the same Treason, it is sufficient: If you conspire to commit Treason in *London*, and come with such an Imagination in your Heart to *Oxford* to compleat this Treason, tho' your Design was not first form'd here, I think if this be prov'd, it maintains an Indictment of Treason, and they are two good Witnesses, tho' but one of them speak to what was done at *Oxford*; but in your Case, there are two Witnesses besides Sir *John Jennings*, who speaks fully to the Facts at *Oxford*.

Col. My Lord, Don't you take the Words distinct from any Matter of Fact?

L. C. J. No, complicated with the Fact, which was the Overt-Act: The Coming to *Oxford* with Pistols to make one, if there had been any Disturbance, to seize the King.

Col. Can any Act done in *London* be brought to prove the Treason I am indicted for here?

L. C. J. Yes: That was resolv'd in Sir *H. Vane's* Case: He was indicted for levying War: The Conspiracy was in *Westminster*, but the War was in another County, and yet it was held sufficient to maintain the Indictment in the County of *Middlesex*.

Col. There was War actually levy'd; but here is only bare Words.

There need not be two Witnesses to every Overt-Act, but one Witness to one Overt-Act. and another Witness to another conducting to the same Treason is sufficient, tho' the Acts were in several Counties.

Mr. J. Jones. Yes, there are Actions too ; your arming yourself and coming to Oxford.

Here the other Judges declar'd they were of the same Opinion in Point of Law with the Chief Justice.

Col. My Lord, I don't doubt but I shall prove this to be one of the most hellish Conspiracies that ever was : A Design to destroy all the Protestants in England that had the Courage to oppose the Popish Plot, in which no Man of my Condition has done more than I have : If these Witnesses had known me guilty of such a Design as I am charg'd with, and had been good Subjects, they would have apprehended me at Oxford : But how improbable is it, that I should talk such Things with Papists, Priests, and Irishmen, who had broke their Faith with their own Party, which they had given under a Penalty of Damnation, Men who had been concern'd in Plots and Treasons, to cut the Throats of Protestants : Indeed I did hear there was a Design of destroying the Parliament at Oxford, and against all Protestants ; and I was resolv'd, if I liv'd, to come along with the Parliament ; and if there was any such Design, to live and die with them ; but my Arms were no more than a Sword and a Case of Pistols : My Lord, I had the Honour to be sent for before the Sitting of the last Parliament at Westminster, by some noble Peers, to the Crown Tavern behind the Exchange : (I began then to be popular, and to be call'd the Protestant Joyner) And the Duke of Monmouth said, they heard a good Report of me, and that I understood Building, and they confided in me to search under the Parliament House, that there might be no Tricks plaid them by the Papists ; and my Lord Lovelace went with me and some of the House of Commons, and I receiv'd Thanks for my Service. And, my Lord, there was not only an Oath made of a Design to destroy the Parliament at Oxon, but it was the general Belief some Evil was intended them ; and People generally arm'd themselves with Sword and Pistol, lest they should be attack'd by the Papists : And I came down two Days after the Parliament safe, with the Lords Howard, Clare, Huntington, and Paget, and

Page 787.
Colledge confesses
he came to Oxford
with an Intention
to defend the
Parliament.

Says, That it was
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and went to Town again with the Lord *Lovelace*, Sir *Tho. Player*, and Sir *Robert Clayton*, who were all in great Fear of *London*, being surpriz'd by the Papists; but no mortal Man ever heard of the King's being seiz'd, till these Men come and say I had such a Design, and came hither for that Purpose: But, my Lord, 'tis a most wicked Falshood; I know no Man, either Parliament Man or other, that wou'd have stood by me in such a Design; and can any Man suppose that I wou'd singly have made such an Attempt: I declare, I never knew of any Design against the Government, or spoke one of the treasonable Words I am charg'd with: God, my Eternal Judge, knows that I speak true.

L. C. J. Well! Will you call your Witnesses? For I must tell the Jury as I did before, at your Request, concerning Mr. Attorney, that no Allegation is to be believ'd, unless it be prov'd: No Man wou'd ever be guilty, if himself were to be believ'd.

Mr. Attorney. My Lord, I hope he shall observe the same Rule we did, and call but one Witness at a Time.

L. C. J. Are not your Witnesses together? Send to them.

Col. I don't know, I han't seen one of them since I came: This is not the first Time the Papists have had a Design against my Life, tho' 'tis the first Time they went about to take it away by Law.

L. C. J. I don't know one Papist that was a Witness against you.

Col. Every Man of them have been Papists, except Sir *W. Jennings*.

Mr. Attorney. Was Mr. *Masters*?

Col. He testifies only some merry Discourse.

Mr. J. *Jones*. Do you make Merry with the blackest Tragedy that ever was, that horrid Rebellion and the Murder of the King?

William Shewen was call'd.

Col. What do you know of Mr. *Turberville*?

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*Colledge calls his
Witnesses, and
endeavours to
prove a Conspiracy
against him
and other Whigs.*

Shewin. I heard him say last *Thursday* Night at *Charing-cross*, that if I went to *Oxon* I shou'd hear strange Things against *Colledge*; and he wou'd lay ten to one that *Mr. Bethel* and *Mr. Wilmore* shou'd be hang'd at *Christmas*, and he wou'd lead *Bethel* by the golden Chain along *Fleetstreet*, and down with his Breeches in the Middle of the *Coffee-house*, with a Band about his Neck and a Cloak.

Serj. Jefferies. I'll assure you he's a bold Man, to say all these Things against Sheriff *Bethel*.

Col. Do you know any Thing of this Conspiracy?

Shewin. I know they laid who shou'd be hang'd at *Candlemas*, who at *Christmas*, and who at several other Times.

Col. Did they say when I shou'd be hang'd?

Shewin. I heard there was one to be return'd on the Jury, that was resolv'd to hang him, right or wrong.

Mr. H. Sheriff. I did hear there was such a one, and I left him out of the Jury.

Henry Hickman was call'd.

He depos'd, That *Haynes* used to come to see one that lodg'd at his House, and his Lodger told him, that *Haynes* was a Papist, and a very dangerous Fellow; and that once he listned at the Door when *Haynes* came to see his Lodger, and he overheard *Haynes* say, *God damn me, I care not what I swear, nor who I swear against; for 'tis my Trade to get Money by Swearing.* And that *Haynes* swearing against my Lord *Shaftsbury*, the Deponent bethought himself of it.

Mrs. Oliver was call'd.

She depos'd, That *Bryan Haynes* wrote a Letter in her Father's Name unknown to him.

L. C. J. By whom is it subscrib'd?

Clerk. By no Body.

Mrs. Oliver. He wrote it as from my Father, and sent it into the Country.

Mr. Attorney. Did you ever know him forswear himself?

Mrs. Oliver. No.

Mrs. Hall was call'd.

She

She depos'd, That *Bryan Haynes* lodg'd at her House; and, about the Time of *Fitz-Harris's* Tryal *Haynes* told the Deponent that the *Dutchess of Portsmouth* came to him, and begg'd of him, upon her Knees, that if he had any Kindness for his Majesty, he wou'd shew it at that Juncture: That she understood he had formerly an Acquaintance with *Everard*, and desir'd he wou'd renew it, and endeavour to get him over, and some others, and make a Presbyterian Plot of it.

Witnesses call'd
to take off the
Credit of *Haynes's*
Evidence.

L. C. J. What a Story is this?

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Mrs. *Hall* depos'd farther, That *Haynes* told her he had receiv'd a Message from the King by a Justice of the Peace, offering him his Pardon, and desiring him to accuse certain Persons; but *Haynes* said, he wou'd never do such base Things.

Mr. Attorney. Did you believe him to be so honest a Man that he wou'd not do those base Things?

Mrs. *Hall*. I never saw his Face 'till he came to lodge here; but I found him to be a Man that made but little Conscience of what he said or swore: And I remember, when *Thomson*, in his *Weekly Intelligence*, accus'd *Bryan Haynes* of speaking treasonable Words, *Haynes* read an Adversetisement to us, which he said he design'd to publish, viz. That he challeng'd any Man to charge him with Treason; but he own'd he was employ'd to put the Plot upon the Dissenting Protestants.

L. C. J. Did he ever publish that in the *Intelligence*?

Mrs. *Hall*. I never read it publish'd.

Mary Richards, Mrs. *Hall's* Maid, appear'd.

She depos'd, That *Haynes* wrote such an Adversetisement, viz. That he challeng'd any one to charge him with Treason, but he own'd he was employ'd in putting the Plot upon the Dissenting Protestants: And that he told her Mistress he had a Message from the King, offering him his Pardon; and being ask'd why he did not accept of it, he answer'd, he was to do such base Things, so beneath a Man, he wou'd never do them; and that he had 500 l. offer'd him, besides the King's Pardon.

Mr. Att.

Mr. Attorney. When was this?

Maid. It was a Week before he was taken.

Mrs. Wingfield appear'd.

Col. What do you know of Haynes?

Wing. I know he is an honest Man; he marry'd my Daughter, and always behav'd himself like a Gentleman, and never did any thing unhandfom in his Life.

Mr. Serj. Jefferies. Have you any more such Witnesses?

Col. I never saw her before; but I believe she has said the contrary in another Place.

Wing. No Body can say so; and I had done the Gentleman a great deal of Wrong if I had.

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John Whaley appear'd.

He depos'd, That about six Years ago Haynes was a Prisoner in the King's Bench, where the Deponent sold Drink, and that Haynes came into his Cellar to drink, and carry'd away a Tankard.

L. C. J. Why did you not indict him for it?

Whaley. I acquainted the next Justice of Peace, who was the Marshal, and he put him from the Master Side to the Common Side.

L. C. J. He was no good Justice of Peace, in the mean Time.

John Lun appear'd.

He depos'd, That three or four Days after the Bill against Colledge was brought in Ignoramus by the Grand Jury, he went into the Derby Ale-House by Fleet-Ditch, where he found Bryan Haynes, who ask'd him to drink a Tankard with him, to which the Deponent consented; and Haynes began the King's Health, the Queen's, and the Duke of York's, and then he fell foul upon the Grand Jury, because they had not found the Bill against Colledge, and said, my Lord Shaftsbury was a stile Toad, but he wou'd do his Business very suddenly; and that the Parliament were a Company of Rogues, they wou'd give the King no Money, but he wou'd help him to Money out of the Fanaticks Estates. And that Haynes added, They wou'd damn their Souls to the Devil before the Catholicks Cause shou'd sink.

Lun

Lun depos'd farther, That on *Monday* last he met with *Haynes* at the *Crown* in *Colebrook*, and he drank the King's Health with him; and the Deponent asking *Haynes* how he did, *Haynes* ask'd if he knew him; and the Deponent told him he had drank with him once before; and *Haynes* reply'd, You have a good Memory: And as they were talking of Sheriff *Bethel's* marrying a Woman they saw there, the Deponent said, Sheriff *Bethel* is able to maintain her, he has a good Estate; and *Haynes* answer'd, it shall be the King's e'er long.

Col. So that here is a plain Design against all eminent Protestants.

Haynes. I never saw this Man till I met him at *Uxbridge*; and I ask'd Mr. *White*, the King's Messenger, who he was, and he said his Name was *Lun*, and he was his Prisoner two Years before.

Mr. *White* was sworn.

L. C. J. Do you remember that *Haynes* ask'd who Mr. *Lun* was?

White. I was at the Bar at the *Crown* at *Uxbridge* when Mr. *Lun* came into the Yard, and being acquainted with him, I ask'd him how he did, and he call'd for a Pint of Sack to make me drink; and *Haynes* stood by and ask'd who he was, and we drank the King's Health; but I heard none of the Words *Lun* mentions.

Mr. Serj. *Jefferies.* Did *Lun* mention any former Meeting with *Haynes* at *Fleet-bridge*?

White. Not one Word of that.

Lun. I will take the Sacrament upon it, what I say is true.

Mr. Serj. *Jefferies.* We know you, Mr. *Lun*: We only ask these Questions that the Jury may know you too; we remember what you swore once about the Army.

Lun. I don't come to give Evidence of any Thing but the Truth; I never was upon my Knees before the Parliament for any thing.

Mr. Serj. *Jefferies.* Nor I for much; but yet once you were when you cry'd, *Scatter them, good Lord.*

Jeremiah

Jeremiah Broadgate appear'd.

He depos'd, That meeting *Mr. Turberville*, who ow'd him some Money, they went to drink a Glas of Ale together; and *Turberville* ask'd the Deponent after my Lord *Pomis's* Butler, and said, he had been a great Rogue to him, for when he stood up for the Nation he vilify'd his Evidence: And that *Turberville* said farther, That the King's Witnesses were look'd upon as mean inconsiderable Fellows, and their Salaries lessen'd; and that he had great Profers from Court of Preferment and Rewards, if he wou'd go from what he said, and come upon the contrary; and added, Yes, upon the Faith of a Man, from the highest; but said, he had a Soul and a Body; a Body for a Time, but a Soul for Eternity; and he cou'd not go from it.

Col. Did he say what he was offer'd, and from whom?

Broadg. He said he had great Offers from the Court if he wou'd disown the Popish Plot.

L. C. J. He does not disown it, or ever did.

Col. But he wou'd make a Presbyterian Plot of it now.

John Zeal appear'd.

He said he knew nothing of the Matter; but what *Mr. Ivy* told him; whereupon

Mr. Ivy was call'd.

Col. What have you heard *Turberville* say of me, or of any Presbyterian Plot?

Ivy. I never heard him say any Thing of a Presbyterian Plot.

Col. Did not you call me out with *Macnamarra* and *Haynes* to the *Hercules* Pillars?

The Prisoner
must not call Wit-
nesses against the
Witnesses he has
produc'd.

L. C. J. If you call Witnesses, you must take what they testify for Truth, and must not afterwards call another Witness to disprove your own Witness.

Col. If he has sworn against me I wou'd not ask him any Questions, for I can't expect a good Answer from him; but he was by when *Haynes* made his Discovery.

L. C. J. Will you ask him any Questions?

Col.

Col. I ask him if he has given any Evidence against me any where?

Jury. Yes, I have.

Col. Then I think he is no good Witness for me: Call Mr. Lewes.

William Lewes appear'd.

Col. Do you know any Thing concerning any of the Evidence that hath been given here?

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Lewes. No more than what Zeal told me was told him.

Col. Do you know any Thing of a Presbyterian Plot?

Lewes. If the Court please, I will tell my Knowledge of that; but I know nothing that concerns the Prisoner, only what concerns my Lord Shaftsbury.

L. C. J. That's nothing to the Purpose; call another.

Col. There was a Petition preferr'd to the Common Council at London, wherein the Petitioners set forth, that they were tamper'd with all about a Plot against the Protestants.

L. C. J. From whom was that Petition?

Col. From some of these Witnesses; pray, call Dr. Otes.

Otes appear'd.

Col. Pray, where is the Petition to the Common Council?

Otes. I have it in my Hand, it was presented by Mr. Turberville and Macnamarra to Mr. Wilmore.

Clerk reads the Petition.

L. C. J. What is there in this Petition that contradicts what the Witnesses have said now? They say they have been tempted by the Papists to unsay what they have said; but the Jury have heard it read, and will give it its due Weight.

Col. Pray, Mr. Otes, what do you know of Mr. Turberville?

Otes. A little before the Witnesses were sworn at the Old Baily I met Mr. Turberville, and ask'd him if he was a Witness against Colledge, and Mr. Turberville said he would break any Man's Head that should say so, for he neither was a Witness nor could give any Evidence against him; but meeting

Otes call'd to discredit the Testimony of Dugdale, Turberville, and Smith, who had supported his Evidence as to the Popish Plot.

ing him afterwards at *Oxford*, and asking him if he had any thing against *Colledge*, he said, Yes, he had been sworn before the Grand Jury: Says I, did not you tell me so and so? Why, says he, the Protestant Citizens have deserted us, and God damn him, he would not starve.

L. C. J. Would he say so to you?

Otes. He said those very Words.

L. C. J. What say you to this, Mr. *Turberville*?

Mr. *Turb.* My Lord, 'tis true, I did meet the Doctor near my Lodgings, and he came out of his Coach and spoke to me, and invited me to come to my old Friends; for he said they had some Jealousy I was not true to them, and told me if I would come to the King's Head Club I should be receiv'd with abundance of Kindness, and I never after spoke to Mr. *Otes* any thing about Evidence; I never said I would break any one's Head that said I was an Evidence against *Colledge*, or swore I would not starve, &c.

Otes. Upon the Word of a Priest, he did say those Words to me, which made me afraid of him, and I went away and never dare speak to him afterwards.

L. C. J. 'Tis very improbable he should speak these Words to you.

Turb. I always look'd upon Dr. *Otes* as an ill Man, and never convers'd much with him.

Col. Do you know any thing of the rest, Doctor?

Otes. I know nothing more of *Turberville*, but that he presented the Petition, wherein he says he lay under great Temptations to go on the other Side and accuse some Protestants.

Mr. Attorney. Mr. *Turberville* has not chang'd Sides as you have; he is still an Evidence for the King; you are against him.

Otes. I am against Falshood and Subornation; and it may be made appear plainly that there is Subornation against the Protestants.

L. C. J. You would do well to explain your self.

Mr. Serj. *Jefferies*. Pray, make it out, Doctor.

Otes. As to Mr. *Smith*, I know that some provoking Language having pass'd between him and *Colledge*, at *Richard's* Coffee-House, *Smith* came out and

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and swore, *God damn him, he wou'd have his Blood:* And when I told him these Words did not become a Minister of the Gospel, he reply'd, *God damn the Gospel.* This is Truth, I speak it in the Presence of God and Man.

L. C. J. What can you say of the other Witnesses?

Otes. As for *Dugdale*, I was engag'd with him to *Richard* the Coffee-Man for 50 l. he borrow'd of him; and after *Dugdale's* Return from *Oxford*, I call'd upon him to hasten and get his Money of the Lords of the Treasury; and *Dugdale* said there was a great Talk of his being an Evidence against my Lord *Shaftsbury*, and several other Protestants; but he call'd God to witness he knew nothing against any Protestant in *England*: Afterwards, meeting him at *Richard's* Coffee-House, and pressing him for the Money, he said, he wou'd pay it in a little Time: Mr. *Dugdale*, said I, I'm afraid you have gone against your Conscience; I am sure against what you told me. Says he, It was all along of Colonel *Warcup*, for I cou'd get no Money else.

Mr. Attorney. Mr. Otes is a thorough-pac'd Witness against all the King's Evidence.

Mr. Serj. *Jefferies*. And yet he had been alone in some Matters if it had not been for some of these Witnesses.

Dr. Otes. Perhaps not; but I had always a better Reputation than to need theirs to strengthen it.

Mr. Serj. *Jefferies*. Does any Body meddle with your Reputation? But you are so tender —

Col. You don't do well to affront a Man's Witnesses when he is for his Life.

Mr. Serj. *Jefferies*. I don't affront them; but pray, Mr. *Smith*, what do you say to what Otes testifies?

Mr. *Smith*. There is not one Word of it true, upon my Oath; and I shall prove that he has confounded the Gospel and deny'd the Divinity too.

Otes. Now Mr. *Dugdale* is come, I will tell you something more: He had an old Clap, and he gave

gave it out he was poison'd; and this Sham pass'd through the Kingdom in the Weekly Papers: This I can make appear by the Physician that cur'd him.

Dugd. Upon the Oath I have taken, and as I hope for Salvation, what *Otes* has depos'd is false; and if any one will come and say he cur'd me of a Clap, I will stand guilty of what is imputed to me.

Mr. Attorney. 'Tis unhappy that *Mr. Otes* shou'd come in against those Men who supported his Evidence before.

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Col. Sure what my Witness says is not to stand for nothing, and be hooted out of Court, because *Mr. Dugdale* denies it upon his Oath; I do not suppose he will own it; but God is my Witness he hath said a great deal more to me.

Whether a Witness, who is not upon his Oath, ought to have the same Credit with one that is.

L. C. J. Unless you can prove it, you shou'd not speak it; and as to your Witnesses not being upon their Oaths, they are Witnesses however, and their Weight is left to the Jury; but is it not improbable that these three Men shou'd all come to him, and say what wou'd make themselves Rogues and Villains. And you see there is these three Mens Oaths against this one Man's Affirmation.

Otes. I hope my Word will be believ'd as soon as their Oaths.

Col. What an honest Man says in the Face of a Court is to be believ'd as well as what is sworn.

L. C. J. It is allow'd to be a Testimony, but it must be left to the Jury, who must weigh one against the other.

Col. There is *Mr. Wilmore*, who was Foreman of the Grand Jury, who refus'd to find the Bill upon this Evidence, wou'd have been a material Witness for me.

L. C. J. He has enough to do to clear himself; for he is charg'd with High Treason too by two Witnesses.

Mr. Blake was call'd.

Col. Pray, will you tell the Court what you know of *John Smith*?

Blake. He came to me one Morning, and told me, this *Haynes* had discover'd very material Things

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Things against some great Persons; and a few Days after I was with him at a Tavern, and ask'd him his Sense of *Haynes's* Discovery, and he said, it was a sham Plot, a Meal-Tub Plot.

Mr. Samuel Smith appear'd.

He depos'd, That having heard his Cousin *John Smith* had sworn against *Colledge* at the *Old Baily*, he afterwards met him, and told him, he hoped he cou'd not be that ill Man he was represented; and that the Story of his having sworn a Presbyterian Plot, or a Protestant Plot, and a Design to seize the King at *Oxford, &c.* was not true; and his Cousin answer'd, he had sworn no such Thing, and desir'd he wou'd not believe it of him, and that he did not believe what *Colledge* had said, for *Colledge* did not believe it to be true himself.

L. C. J. So that by your Discourse it seems he did not deny but he had testify'd against *Mr. Colledge*, but that he did not believe there was any Protestant Plot.

Mr. Serj. Jefferies. *Mr. Colledge* thinks all the Protestant Interest concern'd in him.

Mr. Sam. Smith. He did not deny but he heard *Colledge* speak these Words he swore, but he said he did not believe him.

Col. If he knew of no Protestant Plot, it was unlikely I shou'd attempt such a Thing my self.

Mr. J. Jones. You might hope, by those Words, and your poisonous Pictures and Libels, to make them of your Party.

Mr. Thomas Gardner was call'd.

Col. What do you know concerning this Treason that is sworn against me?

Gardner. I was at the *Rummer Tavern* in *Queen-Street*, about a Fortnight ago, with *Mr. Samuel Smith* and *Mr. John Smith*, whom they call *Narrative Smith*, and they were talking very warmly about *Colledge* and the Jury that acquitted him; and *John Smith* said, that two or three of the Jury were Rascals and Villains; and, says he, it is reported that I intend to sham the Popish Plot and make a Protestant Plot, but I vow to God I know of no Protestant Plot, nor any Protestant

concern'd in a Plot but this *Colledge*, and I believe he will be made appear to be more a Papist than a Protestant at his Tryal. Says I, It seems improbable that such a Man as *Colledge* shou'd seize upon the King, or provide, 1500 Barrels of Powder, &c. Upon my Word, says Mr. *Smith*, (clapping his Hand upon his Breast,) when Mr. *Colledge* did say it, I did not believe a Word of it; and, upon my Faith, I believe *Colledge* himself did not believe it when he told me so.

Otes was call'd again.

Col. Mr. *Smith* charges me with speaking treasonable Words when Alderman *Wilcox* gave you a Treat at the *Crown Tavern*.

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Otes. It was last Summer was Twelve-Month I was invited to dine with Alderman *Wilcox* at the *Crown Tavern* without *Temple-Bar*, and *Colledge* said he was invited too; and he and I went together from the *Rain-bow Coffee-House* to the *Crown Tavern*, and Mr. *Smith* either staid behind or walk'd before us; when we came to the *Crown*, we enter'd into a Philosophical Discourse with one Mr. *Savage*, who was formerly a Romish Priest; we discours'd whether the Existence of a God could be prov'd by natural Demonstration, and whether the Soul was immortal: This was our Discourse at the Tavern; and Mr. *Smith* and *Colledge* had no Discourse before: Therefore, when I heard Mr. *Smith* swear as he did at the *Old Baily*, I did, in my Conscience, look upon him to be forsworn in that particular.

Mr. Serj. *Jefferies*. And he swears you are out in this.

Otes. And he talks of Alderman *Wilcox* contributing Money to buy Arms, and Powder, and Shot; but Sir *George Jefferies* knows the Alderman to be a Man of another Employment.

Mr. Serj. *Jefferies*. Sir *George* does not intend to be an Evidence, I assure you.

Mr. *T. Smith* was call'd.

T. Smith. I very well remember the Time when Alderman *Wilcox* gave Mr. *Otes* and some other of his Friends a Treat at the *Crown Tavern*; I was there all the Time, and there were not any treasonable

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sonable Words spoke; for the Room was a small Room and our Company fill'd it, so that any Man might easily hear all that was said; I remember there was some Discourse between Dr. *Ores* and Mr. *Savage* about some Points of Philosophy and Divinity, but I'm confident *Colledge* said nothing at that Time, for I observ'd he set himself down at the Table and fell asleep.

Mr. Attorney. Did you never hear *Colledge* speak any ill Words of the King?

T. Smith. Never in my Life.

Mr. J. *Jones.* Did he never deliver you any of those Pictures?

T. Smith. No, Sir, he never did.

Mr. J. *Jones.* Can you tell so long ago, not only what you said and did your self, but testify to all other Mens Actions that were in the Rome.

T. Smith. I don't speak of all that was done; but I say I remember no such Thing that was said, and I believe no such Thing was said, and I have given my Reasons why: And whereas Mr. *Colledge* is charg'd with providing Arms to go to *Oxford*, I have known him these three Years, and know that he usually rode with a Brace of Pistols before him; I have several Times borrow'd his Horse with his Pistols, and have formerly seen a Suit of Silk Armour of his, which he said he provided against the Papists, for he expected to have a Brush with them.

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Col. It was Silk Armour only for the thrust of a Sword, I had but one Suit, but one Case of Pistols, and one Horse, and they were intended only against the Papists, in Case they shou'd make a Disturbance; and truly, by the Grace of God, I shou'd not have been the last Man then; but I perceive whatever was provided for that Purpose, they wou'd have it believ'd was provided by the Protestants against the King and the establish'd Government: But I hope the Court and the Jury observe there were no new Arms provided, only what I had a great while ago.

Colledge says he provided his Arms to defend himself against the Papists.

Sam. Otes was sworn.

Col. Was you at the Dinner which *Mr. Wilcox* gave your Brother, and did you hear any treasonable Discourse among us?

Sam. Otes. I was at that Dinner, and you, and I, and my Brother went together; and you was saying, in a jocosé Way, when we came out of the Coffee-House, Come, Doctor, I will go with you and be one of your Guard, and my Brother said, so you may if you please; and there was nothing of treasonable Discourse between us, or any Cabals from the Time of going to Dinner; we came into the Room just as Dinner was going into the Room, as I remember.

Mr. Serj. Jefferies. What did they talk of?

S. Otes. Nothing but Matter of common Discourse, of Eating and Drinking, and Country Affairs; several of them had Lands in the Country, and they were talking of these Things.

Mr. Serj. Jefferies. Were there no Disputations in Divinity or Philosophy?

S. Otes. None at all.

Mr. Serj. Jefferies. Why, did not *Dr. Otes* and *Mr. Savage* talk pleasantly of two great Questions in Divinity, the Being of a God, and the Immortality of the Soul?

S. Otes. There was not a Word of that, only common Discourse; I sat at the Table with them.

Mr. Solicitor. Was it before Dinner or after that *Mr. Colledge* fell asleep?

S. Otes. He was not asleep all the while, as I remember.

L. C. J. It is impossible to give an Account of all that pass'd so long ago.

Col. Did *Mr. Smith*, and you, and I, go together?

S. Otes. You and I, and my Brother, went together, and *Mr. Smith* follow'd us; and whereas *Mr. Smith* charges *Mr. Wilcox* with speaking such Words, he did not speak five Words all the Time he was there; he did not stay a quarter of the Time; he had a Son sick in the Country and was going thither.

Mr. Bolron

Sam. Otes contradicts the Prisoner's other Witnesses.

Mr. Bolron appear'd.

Col. What can you say of *John Smith*?

Bolron. As Mr. *Smith* and Mr. *Mowbray* and I *Bolron* call'd to take off *Smith's* Evidence. were travelling from *York* to *London*, in *July* last, Mr. *Smith* ask'd me if I remember'd the Discourse that pass'd between Sir *John Brooks* and me at *Ferry Bridge*, when we came to *London* before; I ask'd him what Discourse, he said, That Sir *John Brooks* said there wou'd be Cutting of Throats at *Oxford*, and that the Parliament went provided, some with eight, some with six, and some with four Men; and that there was a Consult at *Grantham*, wherein it was resolv'd, that it was better to seize the King than to let him go on; and Mr. *Smith* said, he had given an Account of it to the King, and if I manag'd rightly against my Lord *Shaftsbury* and *Colledge* he wou'd make me for ever; and he wou'd have perswaded me to have given Evidence of Sir *John Brooks's* Discourse, and did tell me I must say so and so, for if we did not agree it wou'd signify nothing: But, my Lord, I know nothing of the Matter, I never heard any one speak of it but Mr. *Smith*.

Mr. Attorney. When did you discover this?

Bolron. I discover'd it to my Lord Mayor the Beginning of last Week.

Mr. Serj. *Jefferies*. Thou art such a Discoverer—

Col. Pray, Sir George, don't make your Flourishes upon him; he has been an Evidence against the Papist as well as Mr. *Smith*.

Mr. Serj. *Jefferies*. He was an Evidence, but never had the Fortune to be believ'd.

Mr. Attorney. Have not you seen *Rary-show*, did not you show it at *Oxford*?

Bolron. I have seen the Character of a Popish Successor, but I never saw *Rary-show*.

Mr. *Charlet*, M. A. of *Trinity College*, was sworn.

Mr. Serj. *Jefferies*. Had you never any Discourse with that Gentleman?

Bolron. Never in my Life.

Mr. Serj. *Jefferies*. Mr. *Charlet*, Do you know this Person?

Mr. *Char*. I was at the new Coffee-House by the Schools, when the Parliament sate here, with

The TRIAL of

one Mr. *Dashwood* and Mr. *Box*, and hearing some of the Evidence were there, we desir'd their Company, and Mr. *Bolton* was one of them, and shew'd us the Picture of the *Tantivies* and the *Tonzer*, and told us they were made by *Colledge*, and that he was a very ingenious Man.

Bolton. The Character of a Popish Successor I have seen, but not the other; I never shew'd any such Thing: And as for *Bryan Haynes*, I have heard him, several Times, say he knew nothing of a Popish Plot, or Presbyterian Plot, but if he was to be an Evidence, he wou'd swear any Thing to get Money; he wou'd be a Papist to Day, and a Presbyterian to Morrow; he wou'd be of that Party that was strongest, he wou'd never die for Religion.

Mr. *Mowbray* was call'd.

Col. Pray, Sir, do you know *Narrative Smith*, and what do you know of him?

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Mowbray. Upon our Journey to *London* he was discoursing of the illegal and arbitrary Proceedings of the two last Parliaments, and particularly of those Votes, That whoever shou'd lend the King Money upon the Crown-Lands, or advise the King to dissolve the Parliament, were Enemies to the King and Kingdom; says he, these are Signs of arbitrary Power, and certainly they design to take off the King: Then he proceeded to ask me concerning Sir *John Brooks's* Discourse when he came up before, and much importun'd me to say that Sir *John Brooks* did affirm there wou'd be Cutting of Throats at *Oxford*, and that the King was to be seiz'd there: And when I told him I did not come up with Sir *John Brooks*, nor had no Acquaintance with him, and so cou'd have no Pretence to depose this, he apply'd himself to *Bolton*, and importun'd him to do the same: And he ask'd me what Parliament Men I came up with, and if they thought of justifying their Votes, or wou'd give the King no Money, and stood upon the Bill of Exclusion; for, he said, this was Pretence enough for any Man to swear there was a Design against the King, and that the King was to be seiz'd at *Oxford*: And he wou'd have tempted

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tempted me to swear the same against my Lord *Shaftsbury*, and he said it wou'd be well if it did appear on *Colledge's* Tryal at *Oxford*, for 'twas a Thing of Consequence; that the Popish Plot was thrown out of Doors, and no Man was look'd upon that spoke of it.

Mr. J. Jones. Was this in the Presence of Mr. *Bolron*?

Monbray. No: When he found I was not for his Turn, Mr. *Bolron* rode up to us, and apply'd himself to him.

Mr. Serj. *Jefferies*. Was it after the 3d of *August* you had this Discourse with Mr. *Smith*?

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Monbray. Yes, 'twas after we set out.

Mr. Serj. *Jefferies*. You are sure of this?

Monbray. Yes.

Mr. Serj. *Jefferies*. Why, *Bolron* says 'twas the 25th of *July* you lay at such a Place, and you talk of the 3d of *August*.

Monbray. See, Sir, I will look in my Almanack, it is all set down there—But I find I am mistaken; here it is, we came out the 24th of *August*, and came to *London* the 27th.

Col. He was mistaken, but his Almanack is right.

L. C. J. He speaks rashly, that's the best that can be said: Why did not he refer to his Almanack?

Mr. Serj. *Jefferies*. And still we have lost a Day, for your Almanack says it was the 27th you came to Town, and *Bolron* says 'twas the 28th. You was a Witness, I think, at Sir *Miles Stapleton's* Tryal: Did the Jury believe you then?

Monbray. They acquitted Sir *Miles Stapleton*.

Col. That's nothing to the Purpose, for *Smith* was a Witness there too.

Bolron's Wife was call'd.

Col. Pray, what can you say of Mr. *John Smith*?

Mrs. *Bolron*. Within these three Weeks, since *York* Assizes, he sent for my Husband and *Monbray* several Times; something he wou'd have had them concern'd in, and now and then they have gone to him, and sometimes they wou'd not go,

for they knew his Business; they had discours'd with him, as they said, upon the Road.

Mr. *Everard* appear'd.

Page 802.
Everard's Evi-
dence of his being
apply'd to, to
give Evidence of
a Whig Plot.

Col. What do you know of Mr. *Smith's* Contrivance against me?

Everard. I was to see Mr. *Smith* lately, and he said, he knew of no Presbyterian or Protestant Plot; and when the Bill was brought in against my Lord *Howard*, he said, he wonder'd how my Lord could be guilty; and he suppos'd that himself and I were join'd as Evidence to that Jury, only to give a Countenance to the Evidence; for, says he, I have nothing material to say.

Col. Have not you and Justice *Warcup* had some Discourse? What would he have had you done?

L. C. J. That can't be material; here is nothing of Mr. *Warcup* in this Tryal.

Col. My Lord, the Papists design to make a Protestant Plot to turn off their own; and if there was no Presbyterian Protestant Plot, no Body to join with me, I could not do it my self. 'Tis impossible I shou'd entertain a Design of seizing the King my self, and improbable I shou'd speak it. Now, my Lord, this Man was solicited to come in for an Evidence of such a Plot.

Everard. Justice *Warcup* wou'd have perswaded me to have sworn, against some Lords, a Presbyterian Plot, but I know of no such Thing.

Mr. Serj. *Jefferies*. My Lord, let us have no Discourses that concern third Persons here.

Mr. J. *Jones*. Must Justice *Warcup's* Fame be traduc'd behind his Back, in the Face of the Country when 'tis nothing to the Cause before us?

Col. My Lord, 'tis very material for me, that he speak out. Here is a Design of the Papists to turn a Plot upon the Protestants; they begin with me, and if they have my Blood, who may feel the Effects of it next I can't tell: And my Lord *Macnamarra* told me, that Man wou'd have seduc'd him to have retracted his Evidence.

L. C. J. *Macnamarra* is no Evidence against you neither.

Col. He was an Evidence against me at the finding the Bill; and by some Trick or other they have

have laid him aside: I desire Mr. *Everard* may tell what he knows.

L. C. J. He does not say Mr. *Warcup* would have had him swear what was not true.

Evidence permitted to be given of what one said who was not concerned in the Prosecution.

Everard. But Mr. *Warcup* said there was certainly a Presbyterian Plot, and that some of the Protestant protesting Lords must be in it; and said, I must certainly know much of it, and said I might safely swear it if I knew it.

Mr. J. *Jones*. What is this to the Purpose? Must Mr. *Warcup*'s Name be brought upon the Stage when he is not here to justify himself?

Here Mr. Warcup came into the Court and desired to justify himself; but the King's Counsel said, it was not material, and wav'd the Matter.

Col. What do you know of any of the others?

Everard. About three Weeks ago I was asking *Haynes* how he could testify what he had done, when he had said before he knew nothing of it; and he answer'd, The Truth was, he could not say much to excuse himself, but his Wife was reduc'd to that Necessity she begg'd at *Rouse*'s Door and he would give her nothing, and that mere Necessity drove him to it; and besides, says he, Self-preservation put me upon it, for I was brought in guilty when I was taken up, and I was oblig'd to do something to save my Life.

Thomas Parkhurst appear'd.

Page 803.

He depos'd, That about the latter End of November he went with Mr. *Dugdale* to Dr. *Tongue*, who lay at Mr. *Colledge*'s, and that they discours'd of the Times, and the Dangers of the Papists; and *Colledge* took down a steel Hat, he had, and said he had a quilted Coat of Armour in his House, and a Blunderbuss, and two Pistols, and said he was provided for the Papists if they did come to make a Disturbance.

L. C. J. This does not contradict Mr. *Dugdale* at all.

Mr. *Symonds* appear'd.

Col. Pray, what do you know of Mr. *Dugdale*?

Symonds. I can say no more than Mr. *Parkhurst* did; That being at *Richard*'s Coffee-House with Mr. *Dugdale*, he was saying he was sent for by Dr.

Dr. Tongue, and seem'd to apprehend some Danger in going alone; and we took Coach and went with him to Dr. Tongue, who lodg'd at Mr. Colledge's, and speaking of their Fears of the Papists, Colledge shew'd his Silk Coat of Mail, and Arms, and said, Let the Papist Rogues begin when they will, I am ready to defend my self for one: This was in *November*, I take it.

Col. So then these Arms they charge me withal were provided before *Christmas*.

Mr. Yates appear'd.

Col. Pray, what do you know concerning *Dugdale*?

Yates. He desir'd me to make a Pistol, which he said he design'd to present to Mr. Colledge, and he said he gave it him as an Acknowledgment, Mr. Colledge having several Times let him have the Use of his Pistols. I said, I believ'd Mr. Colledge was a very honest Man, and stood up for the Good of the King and Government. Mr. Dugdale reply'd, he believ'd he did, he knew nothing to the contrary. This was about three Weeks after the Parliament sate at *Oxford*.

Page 804.

Mr. Clayton appear'd

Col. My Lord, I lay at his House: Pray, what Time did I come to *Oxford*, and what Arms did I bring?

Clayton. You came two or three Days after the Parliament sate there, and you had a Sword and a Pair of Pistols in your Houlsters, which was all I saw.

Col. Mr. Dugdale says he was with me at your House. Did you see him with me there? He says too, we had Mum at your House.

Clayton. I have seen him at my House, but not with you, nor did I ever sell any Mum.

Thomas Deacon was call'd.

Colledge calls Witnesses to his Character.

Col. Please to give the Court an Account what you know of me?

Deacon. He was born at *Watford* in *Hertsfordshire*, where I live; I have known him from his Youth, I never knew but he was a very honest Man; he frequented and kept to the Church of *England*, and paid every Man his own.

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Mr. Attorney. How long is it since he left that Place?

Deacon. I think, about 18 Years.

Col. 'Tis 14 Years; but I have been in your Country lately.

Deacon. He used to come down once or twice a Year: And I have heard him declare himself against the Papists very much.

L. C. J. Did you never hear him talk against the King or Government?

Deacon. No, never in my Life.

Mr. Whitacre appear'd.

He depos'd, That he knew the Prisoner when he liv'd at their Town of *Watford*, and he was of good Behaviour, and a good Church-man then; and he heard the same of him in the Parish where he now liv'd in *Black-Fryars*: He was no Jesuit or Papist, he said he dare aver, but flouted them and their wooden Gods; for he cou'd never endure that Perswasion: That he was a Soldier under his Majesty at the *Chatham* Business, and he never heard him speak a Word against the King or Government: That the Prisoner's Mother liv'd at *Watford*, and his Children went to School among them, and he used to come down to see them three or four Times a Year.

Mr. Neale appear'd.

He depos'd also, That the Prisoner liv'd formerly at *Watford*, went to Church, &c. That he convers'd with him when he came down thither, and particularly the last Spring, and never heard him say any Thing against the King or Government.

Page 805.

Mr. Remington and *Mr. Tanner* also appear'd, and gave the Prisoner the same Character.

Peter Norreys was call'd.

Col. Do you know any Thing concerning *Mr. Smith*?

P. Norreys. I was once at the *Hercules Pillars* with *Sir W. Waller*, *Macnamarra*, *Mr. Joy*, *Mr. Lewes*, *Macnamarra's* Brother, and *Mr. Smith*, and we were talking of the Parliament at *Oxon*; and *Sir W. Waller* said, most Parliament Men were afraid to go to the Parliament: Truly, said *Mr. Smith*, I hope they

they will be provided to go, if they do go; Sir *W. Waller* said, he and his Friends shou'd be provided; and *Colledge* said, he wou'd be provided too, and wou'd go with them; and when Sir *William* offer'd him a Horse, he said he had one of his own; and this was all the Discourse of the Company that Night.

Col. This wou'd be material Evidence against some other of the Confederates; but they are not examin'd, for some Reasons.

Page 806.

T. Norreys appear'd.

He depos'd, That he had convers'd much with *Mr. Colledge*; that he always express'd himself against the Papists, but he never heard him speak against the King or Government.

Col. As to the Papers charg'd upon me, I know nothing of them; nor cou'd I ever draw a Picture in my Life; and how the Paper call'd *The Rare-Show*, came to be found in my House, the next Witness will clear.

Eliz. Hunt was call'd.

Col. Pray tell the Court how these Papers call'd *The Rare-Show*, came to be in my House.

E. Hunt. A Porter brought three Bundles of Paper to my Master's when he was Abroad, and said, that I must pay him for them, and I gave him Six-pence, and he left the Papers.

L. C. J. How long was it before they were seiz'd?

E. Hunt. About seven or eight Weeks.

Colledge confesses
the Pictures were
in his House.

Col. My Lord, I confess I saw the Papers, but I knew not from whence they came, or ever intended to meddle with them. What have you to say more?

E. Hunt. I went to receive the Money *Mr. Dugdale* ow'd my Master, and he putting me off, I told him I thought 'twas hard he shou'd keep my Master's Money and swear against his Life too; and he said there was a great deal to do about his Swearing against my Master, more than needs; for, as he hop'd for Salvation, he did not believe *Mr. Colledge* had any more Hand in the Conspiracy against his Majesty than the Child unborn.

Dug-

Dugdale. As I hope for Salvation, I did not say so.

E. Hunt. Upon my Salvation, 'tis true what I say.

L. C. J. Did you tell her you had nothing against her Master's Life?

Page 307.

Dugdale. I could not say I had nothing against her Master: She ask'd me to write down what I had said, but I told her I knew not what was Treason, that must be referr'd to the Court.

Sarah Goodwin appear'd.

She depos'd, That the Saturday after her Brother *Colledge's* Confinement, there came a Waterman to her Brother's House, and desir'd a Handful of Shavings, and that he went away, and return'd soon after, with three of the King's Messengers, and they made Enquiry after Papers, and she told them she knew of none, and gave them Leave to search; and after they were gone, she ask'd the Maid and her Brother's Son if they knew of any Papers? And they told her there had been some Prints left there by a Porter, but they did not know what they were, nor who they belong'd to; that upon this, she took the Prints and carry'd 'em out of the House; and she found a small Paper-Book and some Writings, (which she now supposes to be dropp'd by the Waterman) and she put them among the Prints, and gave them to her Brother-in-Law, *George Spurs*, and he convey'd them to his House in the Country.

Page 308.

L. C. J. Mr. *Atterbury*, Let us know how these Papers were found? She talks of a Waterman that came in pretending to fetch Shavings, and dropp'd some of them.

Atterbury. Upon my Oath, it was not so: A Waterman did bring me and my Fellows indeed, but he follow'd us into the Yard. I was order'd to search for Papers, and found the first, but could not find those I chiefly look'd for.

Sewel. My Lord, I took the Papers at *Spur's* House at *Bushy*; Mrs. *Goodwin* carry'd one half of them out of the House to *Spur*, and the Maid carry'd out the other.

Mrs.

Mrs. *Goodwin*. I carry'd them out of the House, and deliver'd them to *Spur*.

L. C. J. Then they were in the House.

Mrs. *Goodwin*. They were in the Counting-House.

Col. They carry'd them into the Country, and handed them from one to another; I know not what they have done with them; and, my Lord, I declare upon my Life, I know neither the Printer nor the Author.

L. C. J. Have you any more Witnesses?

Col. No, my Lord.

Mr. Attorney. We shall examine one or two more, my Lord.

Col. If they bring any new Evidence, I hope I may have Leave to contradict them.

L. C. J. You shall be heard to them you need not doubt.

Serj. *Jefferies*. I think we need not; Time enough has been spent already.

Col. No Whispering, good my Lord.

Mr. J. *Jones*. May not the King's Counsel confer together?

Col. Not to whisper, they ought to speak out.

L. C. J. They ought not to speak privately to the Jury, indeed.

John Shirland was sworn.

Mr. Attorney. What do you know of *Bolron*?

Shirland. *Bolron* offer'd me Ten Pounds and a Horse, to swear against Sir *Miles Stapleton*.

Mr. J. *Jones*. Did you ever see this Man, *Bolron*?

Bolron. Yes, he was to have been a Witness against Sir *Miles Stapleton*, and pretended he was suborn'd by Sir *Miles*, or some of his Friends: He is one who lives by his Shifts, and has been whipt in *Bridewel*.

Shirland. You drew your Sword upon me once, because I wou'd not do as you wou'd have me.

Bolron. I profess, it is not so.

Mr. Attorney. Mr. *Smith*, What do you know of *Bolron*?

Smith. He told me he cou'd say as much against *Colledge* as any one, but if I wou'd speak for him, he

Colledge obj. As to the King's Counsel's whispering together.

he wou'd evidence against Sir *John Brooks* for a Discourse at *Ferry-bridge*.

Mr. Bolron. I never heard any such Thing.

Smith. No Man in your Country will believe you.

Col. Nor they wou'd not believe you neither, it seems.

L. C. J. Do you call any more Witnesses ?

Serj. Jefferies. I think we need not.

L. C. J. Then, *Mr. Colledge*, you may make your Observations on the Evidence.

Col. My Lord, I have nothing but Innocence to plead ; no Flourishes to set off my Defence ; I cannot take the Jury or the Court with Oratory ; but I declare, in the Presence of Almighty God, that what is sworn against me concerning providing Arms, or a Design to seize his Majesty, or to rebel against the establish'd Government, is all a Fiction, I never had such a Thought ; it is true, they have sworn desperately against me, but I think it appears they have contradicted one another : It has been prov'd this was a Design, and that they were tamper'd withal, that they complain'd of their Poverty, and wanted Maintenance ; and confess'd they were tempted to come over and swear against Protestants, and they have begun with me ; but I hope the Jury observe I have sufficiently contradicted their Evidence. And is it possible to imagine, if I had a Grain of Sense, that I shou'd discover myself to such a one as *Haynes*, an *Irishman*, and speak all that Treason he has gallop'd thro', the first Time I saw him ? Every Witness, I think, has been confuted by Men of Principles, Persons of Integrity and Honesty, (tho' most of them were unknown to me) and have offer'd their Testimony voluntarily ; and there is no Probability they shou'd come and attest a Falshood for me, who am a Stranger to them, for nothing. My Lord, I am a Protestant, and have been a Lover of the Church of *England*, and profess the same Faith, and never had a Prejudice against any Churchman, but such as promote the Interest of the Papists, for such there are amongst them : I confess, I have heard some Diffenters,

Colledge's Observations on the Evidence..

senters, and have found them honest, just, and pious, free from Oaths and Debauchery, and unlike some who call themselves of the Church of *England*, and lead such Lives, that no Credit can be gain'd to the Church by them. My Lord, I have been a hearty Man against the Papists, and for the Parliament, and am sorry any Man should create Mis-understandings between the King and Parliament. I always thought I serv'd my King when I serv'd the Parliament: I had the Honour to be entrusted by them; and, upon that Account, I came voluntarily down hither at my own Expence; and ever since the Discovery of the Plot, have done my utmost to come at the Bottom of it; and have encourag'd those who discover'd those Villainies against the Life of the King, and against our Religion and Government: And these Men who swear against me, were they who used to follow me for Bread; they used to say they thought it hard they came to save our Lives, and we let them want Bread; and I have collected Money for them; and sometimes they thought fit to petition the Common-Council for Relief; sometimes they have pretended to me they would make farther Discoveries of the Popish Plot; and the first Time I saw *Haynes*, was upon such an Account in *March* last: He said he would discover a Piece of Roguery against my Lord *Shaftsbury's* Life, and I went with him and Capt. *Brown* from *Richard's* Coffee-house to the *Hercules* Pillars, where he told us of that Design to destroy the Parliament at *Oxford*, and of an Army that was to land in the *North*, and another in *Ireland*, and the Duke of *York* was to lead them: At another Time, *Haynes* came to me, under Pretence of discovering the whole Design concerning the Murder of Sir *E. Godfrey*, and said, if my Lord *Shaftsbury* would engage to get his Pardon, he would discover the whole Truth: When I acquainted my Lord with it, says he, These *Irishmen* have confounded all our Business; thou and I must have a Care they do not put a Trick upon us. This may be a Trick of the Papists to ruin us: Afterwards, they brought Mrs. *Fitz-Harris* to my House to confirm what they had

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had told me; and *Haynes* said in my Yard, that he saw my Lord *Danby* come to the Chapel of *Somerjet House*, when the Body of Sir *E. Godfrey* lay under the Altar.

Page 811.
Colledge suggests
that the Lord
Danby was privy
to the Murder of
Sir *E. Godfrey*.

L. C. J. You ramble from the Matter; I would have you keep to your Proofs, and make your Observations upon them; to tell us long Stories of what pass'd between you and others, and is not a whit prov'd, is not usual, or pertinent.

He is reprehended
for scandalizing
Persons with-
out Proof.

Col. I thought it was to the Point, when this Man pretends to a Familiarity with me, to shew how this Acquaintance began.

Mr. J. Jones. Do you think this an Answer to what he proves upon Oath? Have you prov'd one Jot of this? Apply yourself to sum up the Evidence, and answer what is prov'd upon you, and speak as long as you can: But you must not tell Stories to accuse the Jury, that are not prov'd; this was never allow'd in any Court of Justice.

Mr. J. Levinz. You found Fault with Mr. Attorney for opening what you thought he could not prove, but 'tis much worse in your Observations on the Evidence, to run out into Stories that have not been prov'd at all, after your Proof is past.

Col. I could not prove this otherwise, than by *Joy*, who hath been sworn against me; and why my Oath, being an *Englishman* and a Protestant, should not be taken as well as his, who is an *Irishman*, and has been a Papist, I know not.

L. C. J. You go upon that Ground, That your Word is to be taken; but no Justice could be had against Malefactors, if the Word of the Accus'd was to pass for Proof to acquit him.

Col. My Lord, I knew not what they would swear; I had not Witnesses in my Pocket to confront them; but as to *Haynes*, I had a Witness prov'd he own'd he was employ'd to make a Protestant Plot, and another that heard him swear, Damn him he would swear any Thing against any Body for Money, for 'twas his Trade; and, my Lord, it is laid, that I was at *Oxford* the 10th of *March*: I desire that may be prov'd.

L. C. J. As to the Time mention'd in the Indictment, it is not material: If a Horse be laid to be stol'n the Tenth, if it be prov'd the Prisoner stole it another Day, 'tis sufficient.

Col. How does *Dugdale* know, that by the Word *Rowley*, I meant the King?

L. C. J. You may have him call'd again to clear this.

Dugd. The first Time I heard what *Rowley* meant, was from him. I ask'd him what he meant by the Name of *Rowley*? And he said, it was *the King*.

Col. Upon what Account did I explain it?

Dugd. It was when we were talking of one of the Pictures. You said *Mack and Mac* was the Duke of *York*, and *Rowley* was the King.

Col. Upon what Picture was it that I explain'd *Rowley* to you?

Dugd. You have so many Pictures, I can't remember: I receiv'd Pictures of you twice at *Richard's* Coffee-house; and at the *Green Dragon* you thrust one into my Pocket; and Mr. *Baldwin* was by, and said, You are so open you will come to be discover'd.

Col. I will be willing to die, if he, and I, and Mr. *Baldwin* were at the *Green Dragon* together; and I never saw *Raree-shew* before the Parliament was at *Oxford*.

Dugd. I don't say it was that.

Col. What Picture was it I gave you there?

Dugd. I suppose it was one concerning the Bishops, where you put Bishop *Mew* kissing the Pope's Toe: You told me 'twas Bishop *Mew* that had the Patch on.

Col. I put! Did I make it?

Dugd. You said you was the Author.

Mr. J. *Jones*. Remember Mr. *Dugdale* was call'd up about the Exposition of *Rowley*.

Mr. J. *Levinz*. You was in the right Way just now, in making Observations on the Evidence: Go on in that Way.

Col. My Lord, I did not hear half that was said, I hope your Lordship will remember it for me: You are my Counsel as well as my Judges.

L. C. J. In Matter of Fact, we are.

The Judges of
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Col. As to what *Smith* says of the Discourse between the Coffee-house and the Tavern where we din'd with Mr. *Wilcox*, it is not above a Bow-shot from one Place to t other, and he made it a quarter of a Mile's Discourse, if I had had all the Talk ; and Dr. *Otes* tells you too, that *Smith* swore he wou'd have my Blood ; and *Smith* says, I shew'd him my Arms, and that they were to destroy the King's Guards ; whereas I have had them these three Years, and he does not prove I had any Confederates ; but on the contrary it has been prov'd, that he said he did not believe there was any Protestant Plot, and that I said it wantonly : And as for my being in Company with Capt. *Brown* and *Lewes*, they were Friends of my Lord *Howard's*, with whom I came down to *Oxford*, and they lay at the *Chequer* where I did ; and it is not shewn that we were in any Conspiracy.

Mr. J. *Jones*. You told the Witnesh at *London*, that they were such Persons.

Col. I was not acquainted with either of them a Fortnight, before I came down, however, I desire your Lordship's Judgment, Whether what was done at *London* can maintain an Indictment at *Oxford*.

L. C. J. What you said in *London*, is Evidence to maintain the Indictment here, and proves what your Intention was in coming down.

Col. Does my going down to *Oxon* besome an Overt-Act, if I went upon some other honest Occasion, tho' I had said those Words before ?

L. C. J. If you came with a real Purpose to seize the King, that is an Overt-Act ; and the Words before prove the Intention.

Col. As to the Evidence Mr. *Masters* gives of a Discourse with me in Mr. *Charlton's* Shop, of the Parliament in 40, Mr. *Charlton* wou'd have done me Right if he were here : Mr. *Master's* was saying that Parliament cut off the King's Head, and I said they did not : Then we disputed whether they began the War against his Majesty : I said it was the Papists, and that that Parliament was an honest Parliament, and minded the true Interest of the Nation ; and that they were much of

the same Opinion with the Parliament that sate last at *Westminster*.

L. C. J. But they are guilty of a Rebellion, and are declar'd Rebels by Act of Parliament since the King come in.

Mr. *Masters* stood up again.

Col. Pray relate the Discourse that pass'd between you and I.

Mr. *Masters*. You justify'd the late long Parliament, and said they were a Parliament that did nothing but what they had just Cause for. Said I, *How can you be so impudent to say so, when they rais'd the Rebellion against the King and cut off his Head.* And you said, *They did nothing but what they had just Cause for, and the Parliament that sate last at Westminster were of the same Opinion.*

Col. Did not I first say, that they did not begin the War or cut off the King, but the Papists did it.

Mr. *Masters*. You would have had it, the King begun the War. You did say in your Discourse, the Parliament did not begin the War, or cut off the King's Head; and I think, you did say, Papists had a Hand in it. But you leave out the most material Part of our Discourse, (*viz.*) That they did nothing but what they had just Cause for.

Col. It was always my Sense, that the Parliament did not cut off the King's Head, for they were out of Doors long before that came to pass.

L. C. J. Don't let us mince the Matter: The War was a Rebellion on the Part of the Parliament, and was so declar'd by Act of Parliament; and if you argu'd at that Rate, it shews that you are a very ill Man; for you justify such Things as would lead us to the same Things again; and don't go about to palliate it *ad faciendum populum*.

Mr. J. *Levinz*. It was the Garbage of that Parliament, (the *Rump*;) that appointed the High Court of Justice, and they call'd themselves the Parliament of *England*; and that Parliament it was that begun the War.

The Parliament who began the War in 41, declar'd Rebels by Act of Parliament 13 Car. 2.

Col. My Lord, Mr. *Masters* is pleas'd to say this of me ; but I thought no ill at that Time, nor did he seem then to understand it so. I know he talk'd violently and passionately with me, as he us'd to do, but I thought he was so much a Gentleman, that if I had spoken any Thing that had not become me, he wou'd have taken Notice of it. I desire the Jury will take the Discourse together, and it will appear I did not think the Parliament were concern'd in those Things, but were a Parliament that stood up for the Rights of the People : And if so, then the Parliament at *Westminster* were of the same Opinion : And, my Lord, I desire to know, if any Words, spoken six Months before I was charg'd with them, can be given in Evidence upon the 13th of the King.

L. C. J. As to that Part of the Statute that concerns Treasons, the Prosecution need not be within six Months ; but the Indictment is founded also on 25 *Edw. 3.*

Col. And ought there not to be two Witnesses by the 25th of *Edw. 3* ?

L. C. J. No ; but another Statute requires two Witnesses, tho' one Witness to one Fact, and another to another Fact, at another Time, are sufficient to maintain the Indictment, as it was told you was resolv'd in the Lord *Stafford's* Case by all the Judges.

Col. They prov'd Fact in that Case, as writing Letters, and offering Money to kill the King.

L. C. J. Read the 13th of the King, where Words are declar'd to be Treason. [*Which was done.*]

You see, that to compass or imagine the Imprisonment of the King, and to express it by malicious and advis'd Speaking, is Treason, when prov'd by two lawful Witnesses.

Col. What lies before the Jury, as done at *Oxon*, is supported only by a single Testimony.

Mr. J. Levinz. Nay ! Mr. *Dugdale* and Mr. *Turberville* both swear the same Thing, (*viz.*) your Design to seize the King at *Oxford* : And if it was requisite, the same Thing shou'd be prov'd to be said at the same Time by two Witnesses, the King

*Colledge justifies
still there ought
to be two Wit-
nesses to one Fact
Page 817*

must be very unsafe; for the Conspirator wou'd be sure never to say the same Things before two Witnesses at the same Time.

Col. If the King is not safe upon those Terms, no private Man is safe the other Way: All Society and Conversation is at an End.—— However, I insist that the Testimony of these Men is invalidated by substantial Persons: I am wholly innocent: The Jury are my Judges, and I beseech them, as they will answer me at the Great Day of Judgment, that they will do me Right.——If a Man shall be sworn against by such Fellows, Papists, *Irishmen*, and such as have declar'd themselves Traitors, and to have been in all Manner of Rogueries, Plots, and Murders, no Man can be safe: I hope your Lordship will inform the Jury rightly; and that the Jury will consider whether there has not been more Occasion of talking of late, and whether a Slip of the Tongue ought to be constru'd a malicious advis'd Speaking, I mean my Discourse with Mr. *Masters*, who talk'd with me, as hot as Fire, at that Rate I told you.

*Colledge concludes
his Defence.*

I desire the Jury will take all into their Consideration: I expect a Storm of Thunder from the learned Counsel: I am unlearn'd, and must defend myself without Counsel. I know not whether this be the Practice in any Nation; but it is hard, that I, who am an illiterate Man, must stand here all Day, not qualify'd to write or speak, and they being many and learned in the Law, shall take all Advantages against me a single Person. I take God to Witness, I am as innocent as any Person upon Earth, and beseech you not to be frighten'd nor flatter'd. Do according to your Judgments and Consciences; you are my Judges, both as to Law and Fact; you may acquit or condemn me, and my Blood will be requir'd at your Hands. The Lord Almighty direct you to do me Justice, and I ask no more.

Mr. Solicitor. Gentlemen of the Jury, the Fact charg'd upon Mr. *Colledge*, is a Design to kill the King: The Manifestation of that Design, is his preparing Arms for that Purpose, and coming down to *Oxford* to seize the King.

Col.

Col. Is this Design or Conspiracy prov'd? Do not let him do me Wrong, my Lord.

L. C. J. We have had a great deal of Patience with you, because we consider your Condition; and had rather hear too much than be hard upon you; and now we have heard you, you must have Patience to hear what the King's Counsel observe.— *Then Mr. Solicitor, having repeated Part of the Evidence, proceeded to make his Observation on it, and answer the Objections made by the Prisoner.*

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Mr. Solicitor. As to that Objection of the Prisoners, that he had his Arms long before, and that they were not provided for this Purpose: Gentlemen, We don't pretend to prove when this traitorous Design began, and how long it has been hatching; but whether he prepar'd them against that Time or not, is not material; for if he had them first innocently, if he afterwards design'd them for such a Purpose, and shew'd them in a Readiness for it, that is a sufficient Evidence to prove this Treason: And it is prov'd, that he said he came down in Expectation that something wou'd be done, and came down accordingly in an Equipage, not suitable to his Profession, arm'd on Horseback with a Case of Pistols, Things that did not at all become a Carpenter or a Joyner to travel with.

Mr. Solicitor's Observations on the Evidence.

Col. My Lord, Let me not be overborn; there is scarce a Carpenter, or Joyner, or Poulterer, in London, but has Pistols when he rides.

L. C. J. We must not suffer this: We had so much Patience with you, that we expect you shou'd be quiet now, and not intercept the Counsel.

Mr. J. Jones. Did not you ramble from the Matter, and yet we suffer'd you to go on.

Mr. Solicitor. As to that Objection, that he cou'd not talk so much between the Coffee-house and the Tavern as the Witnesses testify'd, when he went to Wilcox's Dinner, if you consider how Busy a Man he was, and how ready at talking Treason, you will not wonder, if he talk'd much more than that.

Page 819.

And as he came down with an Intent to seize the King, and expected what he call'd *Some Sport*, so he did endeavour to begin the Sport by that

Quarrel in the Lobby of the House of Lords, with *Fitz-Gerald*; for from little Matters, sometimes, great Things arise; and when Men (as he himself said) were possess'd with an Expectation that the Parliament shou'd be attack'd, a little Matter might have begun the Commotion; and what End it might have had, no Man knows. And as to that Objection: That this is a Popish Design to throw the Plot upon the Protestants; the Witnesses that have prov'd this Treason, are Men of Credit; Men who gave Evidence against the Popish Plotters, and still stand to that Evidence: They are Men whom the whole Nation have given Credit to: It was upon the Credit of *Dugdale* and *Turbervile* the Parliament impeach'd the Lord *Stafford*: And after so solemn a Tryal, where all the Objections that cou'd possibly be made were made; and my Lord *Stafford* was found guilty upon their Evidence, and dy'd upon the Credit of these Men, the Prisoner must not pretend to blow all off with that frivolous Objection, that these Persons were in a Design of throwing a Plot upon the Protestants: And what Sort of a Protestant he is, (tho' he wou'd have it believ'd he is so popular for his Religion, that he has obtain'd the Name of the *Protestant-Joyner*) his Actions best discover: If the Protestant Religion allow a Man to vilify the King, to arraign the Government, and throw off all Manner of Allegiance, then is the Prisoner a Protestant: But if the Papists can with no greater Infamy to the Protestant Religion, than that it shou'd justify the late horrid Rebellion, and such Principles as this Man in his many scurrilous Libels seems to do, and with nothing more than to see this Kingdom in Confusion, and the Church of *England* destroy'd, Mr. *Colledge*, while he is acting this Part, does very ill to call himself a Protestant.

As to the Evidence that *Lun* has given, to take off Mr. *Haynes's* Credit, it seems strange that *Haynes* shou'd say such Things to *Lun* at first Sight; nor is the Nature of that Evidence sufficient to take off *Haynes's* Credit, who is upon his Oath, and especially seeing *Haynes* is supported by three other

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other Witnesses, whose Credit had not been impeach'd, unless by Dr. *Otes*.

And that Dr. *Otes* shou'd come to vilify the Credit of those Men who receiv'd Credit in his Discovery of the Popish Plot, by the Testimony of these very Men: That he shou'd take up those Arguments the Papists had maliciously suggested, but were never able to make out, looks as if the Doctor was again returning to St. *Omers*.

Serj. *Jefferies*. As to what the Law is in this Case, (with Mr. *Colledge's* Favour) my Lords, the Judges are Judges of the Law, as you are, Gentlemen, in Point of Fact: And they have told you, that where a Treason is in several Counties, and one Witness speaks to a Fact in one County, and another to a Fact in another County, if they speak to the same Treason, their Testimony is sufficient; as was resolv'd in the Case of *Gavan*, who was try'd in *London*, and Evidence given of Facts both in *London* and the Country.

Page 821.
Serj. *Jefferies's*
Observations.

And, Gentlemen, I put it upon your Consciences, whether, upon the bare Affirmation of Mr. *Otes*, you will convict three Men of Perjury, upon whose Testimony the Lives of so many have been taken away, and, as we Protestants believe, justly: And, Gentlemen, besides the positive Evidence of these Men, it is probable that they shou'd come voluntarily and tell Mr. *Otes* they were all forsworn and brib'd off, as he wou'd have you believe?

Page 823.

And as to this being a Plot against the Protestants, I hope the whole Interest of the Protestant Religion is not involv'd in the Prisoner at the Bar: The Question is not, Whether there be a Presbyterian or a Protestant Plot, (we declare we know of none) but the Question is, Whether the Prisoner at the Bar has spoken such and such Words, and done such Things as are sworn against him: And tho' such a Stir has been made about Popish Witnesses and *Irish* Witnesses, here has been but one *Irishman*, and never a Papist given any Evidence in this Cause; but had it been so, God forbid that the Country shou'd be an Objecti-

on

on to any Man's Testimony, or that Truth shou'd be confin'd to Places or Persons.

Page 824.

And it is wonderful, that when the Court gave the Prisoner that kind Intimation, that he wou'd do well to prove his Loyalty as well as his Religion, he did not produce some of his later Acquaintance, some that knew him at *London*, rather than bring People to attest he was a good Protestant eighteen Years ago.

Page 825.

Then the Chief Justice directed the Jury, and told them, that besides those Witnesses who swore the Treason positively, the Testimony of Sir *William Jennings* and Mr. *Masters* made the Thing probable, and shew'd the Prisoner had some extraordinary Thoughts, for what cou'd he mean by that Expression, *That it wou'd not be long before more Blood was lost*; or that other, *Marry, mock not, I may be a Colonel in Time*.

Col. Will not these Expressions bear a more favourable Interpretation?

L. C. J. I say you had some extraordinary Thoughts in your Heart.

Col. I am fittest, sure, to explain my own Thoughts, and what may be, may not be too; and Words are always to be taken in the best Sense.

Page 826.

The Chief Justice having summ'd up the Evidence something briefly, Mr. *Colledge* complain'd there were many Things omitted; but the Chief Justice said, he shou'd refer the rest to the Jury; and Mr. Justice *Jones* said, he cou'd add nothing to what my Lord had said.

Colledge reply'd, he desir'd nothing but Justice, and hoped that no Body shou'd be permitted to be with the Jury; for he said, he observ'd, that when the Bill was prefer'd against my Lord *Howard*, Mr. Attorney and Mr. Solicitor were an Hour and half with the Grand Jury: The Court said, they might be with the Grand Jury, but a Bailly shou'd be sworn to keep the Petty Jury, that no Body come at them till they shou'd be agreed of their Verdict.

The Jury allow'd
some Refreshment,
tho' the
Case was Capital.

Then the Court order'd the Jury some Refreshment before they went from the Bar, the Tryal having lasted till Three in the Morning, and they

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they had two Bottles of Sack divided among them in the Prisoner's Presence.

The Jury being withdrawn about half an Hour, brought the Prisoner in Guilty, at which there was a great Shout, and one Person was committed but discharg'd, the next Day. And *Aaron Smith* was order'd to enter into a Recognizance of 500 l. to appear in the Court of King's Bench the first Day of the next Term.

The next Day the Prisoner being brought to the Bar, and it being demanded what he cou'd say why the Court shou'd not give Judgment on him to die according to Law, Mr. Colledge said, That at *London* it was sworn against him that he wou'd pluck the King out of *White-Hall*, but now they said he was to seize the King at *Oxford*; he was wholly innocent of either, and never entertain'd such a Thought in his Life, and pray'd God to forgive them that had sworn against him.

L. C. J. It is too late to make Professions of your Innocence now you are convicted; but because you insist upon it, I shall say something in Vindication of the Verdict: The Court were well satisfy'd with it, there were sufficient Proofs, and the Jury have done according to Justice; and as you manag'd your own Defence, a small Proof wou'd serve to make any one believe you guilty: Tho' you made your being a Protestant Part of your Defence, and call'd so many Witnesses to your Religion and Reputation, none of them gave an Account you had receiv'd the Sacrament, or been at Church for many Years, or what Kind of Protestant you are; indeed it has been prov'd that you were mighty violent and zealous in crying out against Popery and the Papists, but your Actions tended to promote the Ends of the Papists, by throwing us into Confusion; and you that cry'd so loud against Papists, it has been shewn whom you call'd Papist; you had the Boldness to say the King was a Papist, the Bishops Papists, and the Church of *England* are Papists: And as to your Politicks, it has been prov'd that you justify'd the late horrid Rebellion, and they that will justify it wou'd do the same Thing again:

And

Colledge is convicted.

The Chief Justice vindicates the Verdict.

Page 827.

And as to that Part of your Defence where you said you went down to guard the Parliament with you Arms, I can't tell what you meant by it, I believe they none of them thought they needed a Guard; and when the two Houses differ'd so much that the King was pleas'd to dismiss them, they all departed quietly, not a Man was seen to be disturb'd, and how it came into your Head, that were but a private Man, to go to guard the Parliament I much wonder; had all Men of your Condition gone down so to guard the Parliament, what Confusion might we have been in on a sudden? And tho' you say you are but a mean Man, we have seen what was done by *Massanello*, a mean Man in another Country, and by *Wat Tyler* and *Jack Straw* in our own. So that when I consider the Complexion of your Defence it makes an easy Proof have Credit; and tho' in your Case there was full Proof, if there had been a great deal less, the Jury might, with Justice, have found you guilty.

Sentence pass'd
on Mr. Colledge as
a Traitor.

Then Sentence was pronounc'd on *Stephen Colledge* as a Traitor.

Col. What Time will your Lordship allow me for my Preparation.

L. C. J. We do not use to precipitate the Execution in Cases of High Treason; we shall leave Order with the Sheriff to receive the King's Pleasure and obey it; he will not do it so suddenly, but you will have Notice to prepare your self.

He is executed.

Then the Court adjourn'd, and on *Wednesday* the 31st of *August*, 1681, being the Day appointed by his Majesty, he was executed over against the Gate of the Castle at *Oxford*.

Proceed-

Proceedings at the Old Baily, before Commissioners of Oyer and Terminer, upon the Bill of Indictment for High Treason prefer'd against Anthony Earl of Shaftsbury, the 24th of November, 32. Car. 2. 1681.

Page 828.

THE Grand Jury being sworn, the Lord Chief Justice *Pemberton* gave them their Charge: He acquainted them, that tho' all Matters of a Criminal Nature were under the Cognizance of this Court, and subject to their Enquiry, yet his Majesty having Information of some traitorous Designs against his Person and Government, that was the particular Occasion of their meeting at this Time; and therefore he shou'd confine himself in his Charge to such Offences only as related to High Treason.

The Lord Chief Justice *Pemberton's* Charge to the Grand Jury.

He told them that this was a Crime of the highest Nature, tending to the Destruction both of the King and his Subjects, and even of the Government it self, and accordingly the severest Punishments had been appointed for it.

That at Common Law there had been great Variety of Opinions concerning what was Treason, but the Statute of the 25th of *Edw. III.* had ascertain'd it: That, indeed, there had been several other Statutes since, made upon particular Occasions, declaring other Offences to be High Treason, as those made in Queen *Elizabeth's* Time against the Roman Catholicks, who were perpetually conspiring against the Queen and her Government, &c.

Page 829.

That the Act made in the 13th of this King was levell'd particularly against the Principles of such Persons as had cut off his Father, and maintain'd that dangerous War against himself, almost to the utter Extirpation of his Majesty and all his good Subjects, and the Ruin of this flourishing Kingdom.

He

He is of Opinion
Words were not
treasonable by the
25. Edw. III.

He said this Act had very much alter'd the Law in Relation to Treasons, for by this the Intention of levying War was made Treason, which was not so before, unless a War was actually levy'd; that the purposing or designing the King's Death was not Treason before, unless it was declar'd by some Overt Act; but now the very Design, if manifested but by Words, was Treason: That Words expressing any malicious Design against the King's Life, Liberty, or Government, were, by this Act, made Treason, which were not held to be so before; and this was done in order to prevent those seditious and licentious Discourses that were so common in the late Times of Confusion, when Men vented their malicious Intentions to one another without any Restraint.

One Witness to
one Overt Act,
and another to a
nother Overt Act,
deem'd two Wit-
nesses.

Page 830.

Probable Grounds
sufficient to in-
duce the Jury to
find the Bill.

That as to the Bills brought before them, they were to consider first, whether the Matter was Treason within the 25th of Edw. III. and if they doubted, they shou'd advise with the Court; next, they shou'd consider if there were two Witnesses, but if one cou'd testify to treasonable Words spoken at one Time, and another to treasonable Words spoken at another Time, they were two good Witnesses in Law, as had been resolv'd by all the Judges.

He told them farther, That if, by the Evidence produc'd, there was but probable Grounds to call the Persons to account, that was all that the Law requir'd to induce them to find the Bill; that they cou'd not convict the Party, and therefore they need not make so strict an Enquiry as the petty Jury, who were sworn to try the Fact, or Issue: And the Reason of their Institution [the Grand Jury] was, that no Man shou'd be indicted or try'd where there was no Colour or Ground for it, or any Reason to believe that the Thing cou'd be prov'd; he bid them remember also, that it was as great a Crime to acquit the Guilty as to charge the Innocent, and that if they discharg'd the Guilty the Crime wou'd lie at their own Doors: That they were under a double Obligation of doing right, 1. As they were Mem-
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bers of one great Body, of which the King was the Head; and 2. As they was under an Oath to go according to their Evidence.

That Compassion or Pity was not their Province or the Court's; that belong'd to a superior Power from whence theirs was deriv'd: They were to act impartially according to their Evidence, and if they thought the King had Reason to call the Persons to account named in the Indictment, they were to find such Bills.

Then a Bill of High Treason was offer'd against the Earl of Shaftsbury; and Sir Francis Withins mov'd that the Evidence might be given in Court publickly.

Motion that the Evidence to the Grand Jury may be deliver'd in Court.

The Chief Justice said that this being insisted on to prevent any false Reports concerning the King's Witnesses or the Evidence, he cou'd not deny the Motion.

Whereupon the Jury desir'd a Copy of their Oath, and withdrew; and being return'd, the Fore-man said, they were of Opinion they ought to examine the Witnesses in private, according to constant Practices; and they insisted on it, as their Right, to examine the Witnesses in private, being bound to keep the King's Secrets by their Oath.

The Jury insist they ought to examine the Evidence in private.

L. C. J. Late Usage may have brought you into this Error; it is not your Right, but for the Conveniency of the Court, the Judges usually having on these Commissions much Business upon their Hands, have, for their Convenience, permitted the Witnesses to go to the Jury and be examin'd by them; but originally all Evidence was given in Court, and the Witnesses are still sworn there: And it is not for your Advantage to have the Examination publick, that you may shew you do nothing clandestinely; besides, the Thing being of an indifferent Nature, and the King requiring it, you ought to comply with him: You may here ask the Questions your selves, and take your own Time; and as to keeping your Councils, that relates to your Debates, and in them you are allow'd to be private.

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Foreman. My Lord, we apprehend the very Words of the Oath obliges us to Privacy, for it says,

says, *We shall keep the Counsel's and our own Secrets* which implies the Examination shou'd be secret.

Mr. Papillon. My Lord, we understand that the ancient Usage and Custom of *England* is the Law of *England*, and as we wou'd not do any thing that might be prejudicial to the King, so neither wou'd we do any thing that shou'd be prejudicial to the Liberties of the People: Besides, a publick Examination may prejudice the King; for where Witnesses are examin'd privately, and Persons are discover'd to be guilty who were not thought of before, we us'd to intimate this to the Court, and such Persons were secur'd; but by this publick Examination it will come to such Persons Ears, and they will abscond; besides, the Evidence being fore-known, Witnesses may be pick'd up to contradict the King's Witnesses. And the Jury also apprehend that in private they can more freely examine Things for satisfying their Consciences, and hope they shall do their Duty without Favour or Affection.

The Court rule
that the Evidence
should be publick.

L. C. J. As to your Debates, you are bound to conceal them, but as to the King's Secrets, you do not break you Oath; if the King will have it publick, 'tis the King publishes it: And as to the common Usage, it was not only the ancient Practice, but every Term Evidence is heard in Court by the Grand Jury; it is usual, if desir'd, and I never knew it deny'd or stood upon by a Grand Jury till of late: And, Gentlemen, the King may be pleas'd with the Care you take of his Affairs, but, no doubt, the King's Counsel have examin'd the Matter, and understand it will be no Prejudice to the King to have the Evidence heard openly in Court.

Foreman. The Jury desire it may be recorded that they insisted on their Right.

L. C. J. We are not to record what every Man desires to be recorded; but here will be Witness enough of it you need not fear.

L. C. J. North. This was stood upon last Sessions, but all the Judges were of this Opinion, and therefore you ought to acquiesce; indeed, where the King will, he ought to have it kept secret,
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but where the Prosecutor has desir'd the Evidence might be publick, I never knew it deny'd.

Mr. Sheriff *Pilk.* I desire the Witnesses may be kept out of Court, and call'd one by one.

Page 832.

L. C. J. The King's Counsel will not be afraid of doing it ; but Sheriffs don't use to move Things of this Nature. It is not your Duty, Mr. Sheriff, to meddle with it.

The Indictment read.

The Indictment sets forth, That *Anthony* Earl of *Shaftsbury*, late of *St. Martin's* in the *Fields*, in *Com. Midd.* not having the Fear of God in his Heart, or weighing the Duty of his Allegiance, but being mov'd and seduc'd by the Instigation of the Devil, &c. did, on the 18th Day of *March*, in the 33d Year of the King, and divers other Days and Times, as well before as after, in the Parish of *St. Mary-le-bow*, in the Ward of *Cheap*, *London*, traitorously compass and imagine the Death of the King, and the Subversion of the Government, to depose his Majesty, and to raise War and Rebellion against him within this Kingdom of *England* ; and to fulfil and perfect his said traitorous Imaginations, he the said *Anthony* Earl of *Shaftsbury*, did maliciously, traitorously, and advisedly, provide and prepare several armed Men of the King's Subjects, to aid and assist him : And the better to effect his said traitorous Purposes, the said Earl did then and there traitorously assemble, meet, and consult, with one *John Booth*, and others the King's Subjects : And then and there the said *John Booth* and others, in the Hearing of divers of the King's Subjects, did traitorously and advisedly perswade to be assisting to him in his said Treasons : And farther, that the said Earl did, at the Day and Place aforesaid, traitorously and maliciously assert and declare, That in a short Time the Parliament was to meet at *Oxford*, and he had inspected the Elections, and consider'd the Dispositions of the Generality of the Members, and was satisfy'd the Parliament wou'd insist upon three Matters, viz. The Bill of Exclusion against the Duke of *York*, The abolishing the 35th of *Eliz.* and the passing a new Bill for the uniting Protestants ; with divers other good Bills : To which he, the said Earl, was certain the

The Indictment for treasonable Words.

The TRIAL of the

King wou'd refuse his Assent, and therefore he expected there wou'd be a Division between the King and Parliament: And that many noble Lords and worthy Members of the Lower House did concur in the same Opinion, and were resolv'd to insist on passing those Bills: And if the King refus'd, they had provided Strength to compel the King to grant them: And, for his Part, he, the said Earl, had provided stout Men, to be commanded by Capt. Wilkinfon, of whom the Earl had agreed the said John Booth shou'd be one: And that the said Earl did also, in order to effect his said traitorous Purposes, at the Time and Place aforesaid, assert and declare, That the King was a Man of no Faith, and that there was no Trust in him: And that he deserv'd to be depos'd as well as Richard the II. And did farther assert and declare, That he, the said Earl, wou'd never desist, until he had brought this Kingdom of England to a Commonwealth, without a King: And that the said Earl, and those who wou'd assist him, (and he knew many that wou'd assist him) wou'd make England a Commonwealth, as Holland was: And that they wou'd live as in Holland; and the King and all his Family shou'd be rooted out: And that the said Earl did also maliciously, advisedly, and traitorously assert and declare, That the King was a Man of an unfaithful Heart, and not worthy to be trusted, and not fit to rule and govern, being false, unjust, and cruel to his People; and if he wou'd not be govern'd by his People, they, the said Earl and the said other Traitors, wou'd depose him: Against his Allegiance, the King's Peace, his Crown and Dignity, &c.

Page 833.

L. C. J. Do you desire the Witnesses shou'd be examin'd apart.

Jury. It is our Desire.

Foreman. We desire we may have a List of the Witnesses.

L. C. J. All their Names are indors'd on the Indictment; but to have a List of their Names beforehand, I don't know any Reason you can assign for it.

Foreman. I desire we may see the Warrant by which the Earl of Shaftsbury was committed.

L. C. J.

L. C. J. That the Lieutenant of the Tower keeps for his Indemnity; we cannot demand it of him.

Mr. Papillon. We desire the Witnesses may come one after another, and give their Evidence, and then the Jury wou'd withdraw, and consider what Questions to ask them.

L. C. J. You shall do so: We used the same Method at the Request of the last Jury.

Mr. Attorney. I am inform'd there were several Questions to be ask'd the Witnesses, to direct the Grand Jury how to demean themselves.

L. C. J. Mr. Attorney, the Request is reasonable; and you, Gentlemen, that are Witnesses, you must all go out and come in as you are call'd, one by one.

Then William Blathwait, Esq; was call'd, and a Paper shewn him.

He depos'd, That this Paper was taken out of a Velvet Bag, which was in a Trunk that Mr. Gwyn, one of the Clerks of the Council, seiz'd at my Lord Shaftsbury's House: That Mr. Gwyn having seiz'd my Lord Shaftsbury's Papers, and brought them to the Council-Office, and put them into one of the Rooms, and lock'd the Door, he deliver'd the Key to the Deponent. And that on the 6th of July, by Order of the Committee of Examinations, the Deponent brought the Papers to the Council-Chamber, and the Trunks being seal'd, were open'd in the Presence of some of the Lords of the Council, and of Mr. Wilson and Mr. Starkey, who were appointed to attend, on Behalf of my Lord Shaftsbury; and that this was one of the Papers that was then taken out of the Velvet Bag that was in the great Trunk; and that Mr. Secretary Jenkins had this Paper some short Time in his Custody, and then return'd it to the Deponent again.

Evidence that the Paper call'd the Association, was found in my Lord Shaftsbury's Closet

Then Mr. Gwyn came in.

He depos'd, That on the 2d of July, he had a Warrant from the Secretary to search my Lord Shaftsbury's House for Papers; that he took a great many, and divided them into Parcels, and made a Note of the Parcels: That several of them were

in a great Hair Trunk: And some loose Papers, that were in my Lord's Closet above Stairs, he put into a Velvet Bag he found there: That my Lord gave him his Keys as soon as he came, and told him where his Closets were, and said he would seal them up with his own Seal; but afterwards sent the Deponent Word he might seal them with his Seal, and accordingly the Deponent set his Seal upon the Trunk, which he deliver'd to Mr. *Blathwait*.

L. C. J. Were all the Papers that were in that Velvet Bag in my Lord *Shaftsbury's* Closet?

Mr. *Gwyn*. In my Lord *Shaftsbury's* Closet above Stairs: There was nothing in that Bag but what I took out of my Lord *Shaftsbury's* Closet.

Mr. *Secretary Jenkins* sworn.

L. C. J. Was that the Paper that Mr. *Blathwait* deliver'd into your Hands?

Mr. *Sec. Jenkins*. This Paper was deliver'd into my Hands by Mr. *Blathwait*, at the Council-Chamber: I can't say this very Paper was taken out of the Bag, for there were a great many taken out of it, and I being at the Examination of the Papers, this was order'd to be put (and was put) into my Hands, with nine more. On *Monday* last I took the nine Papers intrusted with me, and this tenth out of my Desk, and caus'd my Servant to mark them by Numbers; then I seal'd them up and sent them to Mr. *Graham*, who brought them back to me without any Alteration, and then I put this tenth Paper into the Hands of Mr. *Blathwait* again: All the while it was in my Hands it was under Lock and Key, and none of my Servants saw it but when it was number'd.

Then the Paper was read, being a Draught of an Association.

This Paper, in the Preamble, recites, that having endeavour'd in Parliamentary Way to exclude the Duke of *York* from the Crown, but to no Effect, the Subscribers had therefore thought fit to enter into the following Association, viz.

'I *A. B.* do, in the Presence of God, solemnly promise, vow, and protest, to maintain and defend

‘ send, to the utmost of my Power, with my Person and Estate, the true Protestant Religion, against Popery, and all Popish Superstition, Idolatry, or Innovation; and all those who do or shall endeavour to spread or advance it within this Kingdom.

‘ I will also, as far as in me lies, maintain and defend his Majesty’s Royal Person and Estate; as also the Power and Privilege of Parliaments, the lawful Rights and Liberties of the Subject, against all Encroachments and Usurpations of Arbitrary Power whatsoever, and endeavour entirely to disband all such mercenary Forces as we have Reason to believe were rais’d to advance it, and are still kept up in and about the City of London, to the great Amazement and Terror of all the good People of the Land.

‘ Moreover, *J. D. of T.* having publicly professed and own’d the Popish Religion, and notoriously given Life and Birth to the damnable heliish Plots of the Papists, against his Majesty’s Person, the Protestant Religion, and the Government of this Kingdom, I will never consent that the said *I. D. of T.* or any other, who is or hath been a Papist, or any Ways adher’d to the Papists in their wicked Designs, be admitted to the Succession of the Crown of *England*; but by all lawful Means, and by Force of Arms, if Need so require, according to my Abilities, will oppose him, and endeavour to subdue, expel, and destroy him, if he come into *England*, or to the Dominions thereof, and seek by Force to set up his pretended Title, and all such as shall adhere unto him, or raise any War, Tumult, or Sedition, for him or by his Command, as publick Enemies of our Laws, Religion, and Country.

And they did farther bind themselves one to another, with their joint and particular Forces, to pursue to Destruction all who shou’d oppose the righteous Ends of this Association. And lest this pious Work shou’d be obstructed for want of Conduct, they engage themselves to obey the Orders of the present Parliament while sitting, or the major Part of the Members of both Houses,

subscribing this Association, when it shou'd be prorogu'd or dissolv'd ; and wou'd obey such Officers as shou'd by them be set over them, 'till the Meeting of the next Parliament, and then they wou'd shew the same Obedience to them.

Neither wou'd they, for Fear or Reward, depart from this Association during their Lives, on Pain of being prosecuted by the rest as perjur'd Persons, and publick Enemies to God, the King, and their native Country. *In Witness whereof, they set their Hands and Seals, &c.*

Sir Francis Withins. This Paper is plausibly penn'd in the Beginning, but in the last Clause but one they come to perfect levying War ; for they say, *they will obey such and such Officers* ; and in the Association, they say, they will join to destroy the mercenary Forces about *London* ; which is downright levying War against the King and his Guards.

Forem. There is no Hand in it at all.

Mr. John Booth was sworn.

Jury. He has stood in the Face of the Court all this while.

Mr. Booth. I came down but now.

Mr. Shepherd. My Lord, We desire a List of their Names, that we may know who is here and who is not.

Mr. Godfrey. This Man has been here all this while, and all the rest may be here for ought I know.

Sir Fr. Withins. *Mr. Booth*, give an Account of what Discourse you had with my Lord *Shaftsbury*.

Mr. Booth. In the middle of *January* last, I was introduc'd into my Lord *Shaftsbury's* Acquaintance by one Capt. *Henry Wilkinson*, a *Yorkshire* Gentleman, who had known me above twenty Years, and with whom I have had a familiar Conversation a long while. The first Occasion of my waiting on my Lord *Shaftsbury*, was this: Capt. *Wilkinson* did pretend to receive a Commission from my Lord *Shaftsbury*, and some others of the Lords Proprietors of the Plantation of *Carolina*, to be their Deputy-Governor ; and he said he had a hopeful Prospect of that Voyage, and his Interest

was

Mr. Booth's Evidence of some treasonable Words spoken by the Lord Shaftsbury.

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was good, and he cou'd procure me a Commission, and such a Number of Acres for Quantity and Quality, as I desir'd ; and we went to my Lord *Shaftsbury's*, in order to receive Commissions for this Purpose ; and the first Time I went, we found the Earl of *Craven*, Sir *Peter Colleton*, and one *Archdel*, a Quaker, there :

Both before and after this, Capt. *Wilkinson* and I had several Discourses about the Times : I knew him to be an old Royalist, and one who had serv'd his Majesty and his Father in the Wars ; but missing the Preferment and Rewards he expected from the King, he had repented of the Services he had done his Majesty, and was now of another Opinion ; and I had some Inducements too to be of the same Mind : And we often discours'd at my Lord *Shaftsbury's* of the proroguing of the Parliaments, and the Disappointments of the People, and our Fears of Popery and arbitrary Power : We kept a continual Club, and convers'd together near three Quarters of a Year ; and, between *Christmas* and *March*, I went with Capt. *Wilkinson* to my Lord's four or five Times ; and when we came to my Lords, I observ'd there was always great Caution used before we were admitted, and our Names were sent up : From the Affairs of *Carolina* we fell upon Matters of State ; and I remember my Lord used to inveigh sharply against the Times, and look'd upon himself as not so respected, as in those Places he ought to be : And he seem'd discontented, and to be afraid of Popery and arbitrary Power.

And when the Election of Members of Parliament came on, he had an Account Weekly of such as were chosen, and wou'd consider their Inclinations and Dispositions : And he said, the Parliament that was to sit at *Oxford*, wou'd insist on the same Things the other Parliaments had done ; particularly, that they wou'd never grant the King Money, or assist him in what he desir'd, unless he gave the People Satisfaction in those Things they had insisted on before, viz. The Bill of Exclusion, the Repeal of the 35th of *Eliz.* and a new Aet for exempting Protestant Dissenters from the other

The TRIAL of

Penal Laws in Force against them : But if the King wou'd pass these, and some other wholesome Laws, for their Security, he believ'd they wou'd grant the King Money for his necessary Occasions : But if he refus'd this, his Lordship said he believ'd there wou'd be a Breach between the King and Parliament : That the Reason of the appointing the Parliament to meet at *Oxford*, was, that the Court might over-awe them : And that himself, and several other noble Lords, did judge it dangerous to go to *Oxford*, where the Guards, the Retinue of the Court, and the Scholars, who usually encline to the Crown, might over-awe them, that they might not proceed for the publick Good, as they intended ; and therefore his Lordship said, he and others had consider'd, that it was fit for them to have Guards sent down thither ; and accordingly he had establish'd about fifty Men, Persons of Quality, that he believ'd wou'd have Men along with them : And he had entrusted Capt. *Wilkinson* with the Command of these Men, and they were to be at *Oxford* at such a Time ; and if there shou'd be any Breach between the King and Parliament, or any Violence offer'd to any of the Members, these Men, and others, that were provided by the other Lords, shou'd repel Force by Force, and purge the Guards of all Papists and Tories ; and they were likewise to purge the King's Council, particularly the Earl of *Worcester*, my Lord *Clarendon*, *Hallifax*, and *Feversham*, and Mr. *Hyde*, were to be remov'd as dangerous, being the Persons who were suppos'd to advise the King against what the Parliament had urg'd him to : And they wou'd bring the King to *London*, and have Things establish'd for preserving them from Popery, and Arbitrary Power : And upon this Discourse, Capt. *Wilkinson* desir'd me that I wou'd be one under his Command, and that I wou'd provide myself Horse and Arms, and likewise Arms for my Man, which I did before the Parliament met at *Oxford* : And Capt. *Wilkinson* said he wou'd provide a Horse for my Man : I think it was the 23d of *March* the Parliament was to sit ; and we enquir'd how Things went on, and found it was as my Lord

Shaftsbury

Shaftsbury had predicted: That they insisted on those Things he told us, but we did not imagine they wou'd have been so soon dissolv'd. On the *Thursday* before they were dissolv'd, *Capt. Wilkinson* told me he expected a Summons that very Week to go to *Oxford* with those Men that were list'd with him; but News came on *Saturday* of the Dissolution of the Parliament, and so nothing was done.

Sir *Fr. Withins.* When did you discover this?

Mr. *Booth.* About six Weeks ago.

Sir *Fr. Withins.* Had you any Discourse with the Earl of *Shaftsbury* after *Capt. Wilkinson* spoke with you, or before the Sitting of the Parliament?

Mr. *Booth.* The first Motion concerning the fifty Men that were to be my Lord *Shaftsbury's* Guard, came from *Capt. Wilkinson*; but after this, when I went with *Capt. Wilkinson* to my Lord's, the same Thing was discours'd there: The last Time I was with my Lord, was about a Week or ten Days before he went to the Parliament at *Oxon*; and then I heard the same Discourse from my Lord *Shaftsbury's* own Mouth.

Sir *Fr. Withins.* Had you any other Discourse with my Lord?

Mr. *Booth.* If say I made three or four Visits between *Christmas* and *March*; and we every Time discours'd of the King; and if he refus'd those Motions, these Men were to be taken from him, and Force was to be us'd.

Sir *Fr. Withins.* Did you ever solicit any to make this Discovery?

Mr. *Booth.* One Mr. *Banes*, of my Acquaintance, being engag'd in some Business that one *Browning*, a *Yorkshire* Attorney, had wrote to him about, concerning some *Irishmen* that wou'd swear against my Lord *Shaftsbury*: I said I did not know what Conversation my Lord had with these *Irishmen*, but I was satisfy'd he had Conversation tending that Way with some *Englishmen* I knew: Whereupon Mr. *Banes* wou'd have me tell him what I knew, and I gave him some Intimation of it; and after that, I took a Resolution to discover it; and when I did discover it, I declare in the Presence

sence of God, no mortal Man knew what I could say, nor did I make any other Application, but took Pen and Ink, and wrote it down, and seal'd it under a Cover, and sent it to the Council.

L. C. J. Where wou'd you have these Witnesses that are examin'd stand? To keep them apart is impossible, unless we had as many Rooms as Witnesses.

Jury. Let one Man keep them.

L. C. J. Empty the Place where they were the last Time, and let them stand there.

Mr. *Edward Turberville* was sworn.

Sir *Fr. Withins*. Have you had any Discourse with my Lord *Shaftsbury*?

Mr. *Turberville*. Yes, several Times; particularly about the Beginning of *February* last, I waited on my Lord to desire his Letter to the President of the Council, to stand my Friend concerning some Money due to me; and my Lord took Occasion to say, there was little Good to be had from the King while his Guards were about him; that if it was not for them, they shou'd soon go down to *Whitehall*, and obtain what Terms they thought fit. I said, his Guards cou'd not defend him from the whole Kingdom. His Lordship said, The Rabble were all of his Side, especially the People about *Wapping* and *Aldersgate-street*; and the rich Men of the City wou'd vote for them in Elections, but they cou'd not expect they wou'd stand by them in Case of a Disturbance, for they valu'd their Riches more than their Cause. And I heard my Lord say at *Oxford*, he wonder'd the People of *England* shou'd stickle so much about Religion; if he were to chuse a Religion, he wou'd have one that shou'd comply with what was apt to carry on their Cause.

Mr. *John Smith* was sworn.

Mr. *Smith*. I beg I may clear myself from some Reflections cast upon me: It has been reported that I swore before the King, and at the Tryals of *Colledge* and *Rouse*, that there was a general Design against his Majesty; but I take it upon my Oath I never swore any such Thing, nor can I swear there was a general Design by the City or the Parliament against the King.

L. C. J.

L. C. J. Speak what Discourse you have had with my Lord *Shaftsbury*.

Mr. *Smith*. I suppose it is past all Doubt, that I have been very often with my Lord *Shaftsbury*: I have often heard him speak very irreverently of the King, saying, he was a weak, inconstant Man, and led by the Nose, as his Father was, by a Popish Queen, which was the Ruin of his Father: But as to the particular Points I am to charge my Lord *Shaftsbury* with, he sent for me once by Capt. *Manly*, who found me at Mr. *Bethel's* Club at the *Queen's Arms* in *Newgate-street*: When I came to my Lord, he told me Mr. *Hetherington* was with him in the Morning, and said, he was afraid the *Irish* Witnesses wou'd go over to the Court Party; and I said his Lordship might prevent it, by giving them an Allowance, for they were very poor. My Lord answer'd, *Hetherington* had the Charge of them, and he believ'd they did not want; but his Lordship said, he found they stood in great Awe of me, and I must perswade them from going nigh that great *Rogue Fitz-Gerald*, who was pamper'd up and maintain'd by the King and the Court-Party to stifle the Plot in *Ireland*; and added, that if the King were not as well satisfy'd of the Coming in of Popery as ever the Duke of *York* was, do you think, says he, the Duke of *York* wou'd be so much concern'd in the bringing in of Popery as he is? My Lord, I went to the *Irish* Witnesses, and they promis'd me never to go near *Fitz-Gerald*: The next Morning Mr. *Hetherington*, and one *Bernard Dennis* came to me; and *Dennis* said, he was ready to give in an Information against *Fitz-Gerald*, that he tamper'd with him to forswear all he had sworn before: Thereupon we went before the Lord Mayor, Sir *Patience Ward*, and *Dennis* made Oath of it; and I carry'd a Copy of the Information to my Lord *Shaftsbury*: My Lord read the Information, and was pleas'd with it, and said, Mr. *Smith*, Don't you see the Villainy of that Man, and that factious Party, and that the King runs the same Steps as his Father did before him? How can any Thing of this Nature be done without the King?

and

and the Court pamper'd him up : At another Time, a little before the Parliament met at *Oxford*, my Lord, in Discourse, said, that a great many were gather'd together upon the Road between *London* and *Oxford*, in order to terrify the Parliament to comply with the King ; but he was sure they never wou'd comply with him, they were more resolute than ever, for they saw clearly the King aim'd at bringing in Popery : And we have this Advantage of him, says he, if he offer any Violence to us, (for we expect it) that we have the Nation for us, and we may lawfully oppose him, and he will meet with a very strong Opposition, for all that come out of the Country shall be well hors'd and arm'd ; and that, old as he was, he wou'd oppose it to his Power : I said, by this Means, we shou'd be engag'd in another Civil War ; and we shou'd either make an End of Monarchy, or enslave the Nation to Popery for ever : No doubt of one, says he ; but we are sure, for the Nation is on our Side ; and the City, you know how they are, and where-ever they strike, I'm sure the Nation will ; and this I'll stand and die by. This is the Substance of what I have to say against my Lord *Shaftsbury* ; and, upon the Oath I have taken, I am sure I have not added a Word : It is reported in the City, that I have been hir'd and suborn'd, but I never took a Farthing of the King's Money or theirs in my Life.

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L. C. J. Who supposes it ?

Mr. *Smith*. It is in Print in the Book that came out last Night.

L. C. J. I had Reason to expect there was no such Objection.

Brian Haines was sworn.

He depos'd, That he had heard the Lord *Shaftsbury* often vilify the King, and that my Lord conversing with the Deponent concerning his Narrative about Sir *E. Godfrey*, and the Deponent desiring my Lord not to expose him to the King's Anger, for he was sure he wou'd never pardon any Man that impeach'd the Earl of *Danby* ; his Lordship answer'd, That he wou'd go with the Earl of *Essex* and my Lord *Maxfield* to the King,

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and beg the Deponent's Pardon if he would put in Writing what he cou'd testify, and that if his Majesty did not grant the Deponent a Pardon they would raise the whole Kingdom against him; that the King must not expect to live peaceably in his Throne if he did not grant it, for he would make himself the Author of the Plot: And that at another Time his Lordship said, If he did not do it he cou'd not expect to be long King of *England*: And that the Deponent asking his Lordship what they intended to do with the Government if they pull'd the King down, my Lord answer'd, that the Duke of *Bucks*, by his Mother, had as good a Right to the Crown of *England* as any of the *Stuarts*, for she was descended from the *Plantagenets*, from some of the *Edwards*.

John Macnamarra was sworn.

He depos'd, That he was with his Lordship a little before he went to *Oxford*, to desire his Lordship to take Care of him, as he had promis'd to do of the other Witnesses of the Popish Plot; and that he waited on his Lordship at his Return from *Oxford* again, and my Lord was pleas'd to say, that the King was popishly affected, and adher'd to Popery; and that he took the same Methods his Father before him took, which brought his Father's Head to the Block, *and we will also bring his thither*. That about a Fortnight afterwards he was with his Lordship, and he told the Deponent, there was a Provision made for the Witnesses, and the Money was in the Hands of one Mr. *Rouse*, a Servant to Sir *Thomas Player*, and his Lordship then took Occasion to say, That the King was a faithless Man, that there was no Credit to be given him, and that the Dutcheß of *Mazarine* was his Cabinet Council, who was the worst of Womankind.

Sir *Fr. Withins*. Did you hear any Thing about the deposing the King?

John Mac. Yes; he said the King deserv'd to be depos'd as much as ever King *Richard II.* did.

Dennis

Dennis Macnamarra was sworn.

He depos'd, That about the latter End of *March*, or the Beginning of *April*, he was at my Lord *Shaftsbury's* House, with Mr. *Ivy* and his Brother, and my Lord said, *That the King was a Man that ought not to be believ'd, and there was no Belief in him, and that he ought to be depos'd as well as King Richard II. and that the Dutches of Mazarine was his Cabinet Council, and that he did nothing but by her Consent.*

Edward Ivy was sworn.

He depos'd, That soon after the Parliament was dissolv'd at *Oxford* he was at my Lord *Shaftsbury's*, where he heard my Lord say, the King was an unjust Man, and not fit to reign; and he wonder'd he did not take Example by his Father before him; that he believ'd he was a Papist in his Heart, and intended to introduce Popery, and therefore they design'd to depose him and set up another in his stead; and that *Haynes* having something to discover about the Death of Sir *E. Godfrey*, my Lord said, the King dare not deny *Haynes* a Pardon; but if he did, they wou'd rise upon him and force him.

Bernard Dennis was sworn.

He depos'd, That he came over with a Design to make the Plot clear and plain, and was an Evidence at the Tryal of my Lord *Stafford*, which made him taken Notice of to be supported by the Earl of *Shaftsbury*, who sent Mr. *Hetherington* for him several Times, and Mr. *Hetherington* sublist'd him: That once my Lord told the Deponent, in the Gallery of his Lordship's House, that he had given a good Account of the Plot in general, but as to the Queen and Duke of *York*, he must speak more home and positive against them, that he might, at least, corroborate what others swore against them: That a little after the Parliament, at *Oxford*, his Lordship sent for the Deponent, and told him, he understood he was a Clergy-Man, and advis'd him to put on a black Gown, and he wou'd prefer him to a Benefice; that his Lordship recommended the Deponent to Dr. *Burnet*, with whom he had afterwards great Familiarity;

arity; that he waited on his Lordship at another Time and acquainted him he was low in Pocket; my Lord said he had appointed Mr. Rouse to supply him; and that his Lordship ask'd the Deponent how many he thought there was of his Name in his Country, [Ireland] and the Deponent told him he thought there might be 3 or 400 able body'd Men of his Name in the Country where he was born, and my Lord bid him advise those of his Name and his other Friends to be in a Readiness, if Occasion shou'd serve, to assist the Commonwealth of England, for they intended to have a Commonwealth, and no Crown or supreme Head; and that they wou'd extirpate the King and all his Family, as near as they cou'd: And his Lordship said, he wonder'd their Nation were such Fools, for that Queen Elizabeth, King James, and both King Charles's, had wrong'd them, to their very Destruction, but they wou'd be better dealt with if England was a Commonwealth.

L. C. J. The King's Counsel will call no more Witnesses; several of these do swear Words that are treasonable in themselves: Wou'd you ask them any Questions?

Foreman. We will walk up and consider what Questions to ask.

Mr. Papillon. We desire to know if the Indictment is found on the 25 Edw. 3. or the 13 of this King, or both of them.

L. C. J. It is grounded on the 13th of this King, tho' here is enough to find an Indictment of Treason upon the 25th of Edw. 3. The last is the more copious Statute, and has enlarg'd the 25th of Edw. 3. but you are to consider both.

L. C. J. It being *contra formam Statuti*, it may be understood *Statutorum* or *Statuti*; therefore all Statutes that may be the Foundation of this Indictment you may go upon.

Jury. We desire to know whether the Witnesses stand indicted or no?

L. C. J. The Proofs concerning the Credibility of the Witnesses is not properly before you at this Time; that is to be consider'd on the Tryal, by

The Grand Jury are not to examine into the Credibility of the Witnesses.

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by the petty Jury, for there the King will be heard, to defend the Credit of his Witnesses, if any Thing is objected to them: It is proper for the Prisoner to do that; you are only to see whether the Statute be satisfy'd, in having Matter that is treasonable, and attested by two Witnesses who are *prima facie*, credible, unless you of your own Knowledge know the contrary.

Mr. Papillon. If we are not left to consider the Credibility of the Witnesses, we cannot satisfy our Consciences.

L. C. J. You are to consider of the Case according to the Things alledg'd and prov'd: Indeed, if you know any Thing of your own Knowledge, you ought to take it into Consideration.

Then the Jury withdrew, and the Court adjourn'd, and in the Afternoon, the Court being set, the Jury came in again, and examin'd the Witnesses; and first,

Mr. Gwyn was call'd again.

The Witnesses
re-examin'd by
the Grand Jury.

Foreman. Who put up the Papers, and who went with you?

Mr. Gwyn. None but my Lord's Servants, I think, went with me; but I put up the Papers myself.

Foreman. Whose Hand-writing is the Paper, and how came it into my Lord's Closet?

Mr. Gwyn. I can't tell whose Writing it is, or how it came there; but all the Papers in the Bag were there before I came, and I had the Key from my Lord himself.

Mr. Secretary *Jenkins* was call'd.

Foreman. Did not you hear of an *Association* in Parliament.

Mr. Secretary. There was an Answer to a Message from the House of Commons that had something in it that did strongly imply an Association, but this particular Association I do not remember to have heard propos'd.

Foreman. Don't you remember it was read in the House of Commons on Occasion of that Bill?

Mr. Secretary. I heard such a Thing spoken of, but was not present, as I remember.

Foreman. What Date was the Warrant for my Lord *Shaftsbury's* Commitment?

Mr. Secre-

Mr. Secretary. It was about *July*; but I must refer my self to the Warrant for that.

Foreman. Were all these Witnesses examin'd before the Committee?

Mr. Secretary. I can't say all, but I was at the Examination of several of them.

Mr. *Booth* was call'd.

Foreman. We wou'd know when and where you had that Discourse with my Lord *Shaftsbury*?

Mr. *Booth*. 'Twas at *Tbanet-House*, where he liv'd, about ten Days before the Parliament met at *Oxford*; one Mr. *Wilson* led me into the Chamber.

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Foreman. Who was present at the Discourse?

Mr. *Booth*. None but him and I, Sir.

Foreman. In what Room was it?

Booth. It was in the Room he usually sits, on the left Hand as we came out of the Long Gallery; as I remember, we pass'd thro' a Room hung and wainscotted, before we came to it.

Foreman. How long was it before you discover'd this?

Booth. I sent my first Information to the Lords of the Council about seven or eight Weeks ago, by Mr. *Walter Banes*.

Foreman. Had you several Discourses with my Lord, and had you easy Admission?

Booth. I was admitted by Captain *Wilkinson's* Means at first, and ever after had easy Admittance and Familiarity with him.

Foreman. Did he talk to this Purpose every Time?

Booth. Something to this Purpose he did talk every Time, but not so fully.

Foreman. What Education have you had? Was you ever an Attorney's Clerk, or Justice's Clerk?

Booth. I have had an Academical Education, and taken Orders; but never was an Attorney's Clerk, or Justice's Clerk.

Foreman. Do you officiate as a Minister?

Booth. No.

Foreman. Were you ever indicted for Felony?

Booth. No.

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L. C. J.

L. C. J. Sir, he is not to accuse himself, or fix a Scandal on himself.

Mr. Papillon. Did you know any of the fifty Men that you say were list'd with you?

Booth. Not directly, but by Captain Wilkinson's Information.

Foreman. Did Mr. Banes propose any Reward to you for making a Discovery, when you talk'd with him about it?

Booth. Not a Farthing.

Foreman. Are you acquainted with Callaghan and Downing, two Irish-men?

Booth. No, I never was in their Company, or heard their Names, that I know of.

Foreman. Do you know Skeldon or Marriot?

Booth. I have heard of one Marriot that belong'd to the Duke of Norfolk.

Mr. Godfrey. Did you never hear of any Irish Witnesses sent to the Isle of Ely by Marriot?

L. C. J. We gave you all the Liberty in the World, hoping you wou'd ask pertinent Questions; but what is it to the Purpose, whether Marriot sent any Irish Witnesses to his Tenant or no?

Mr. Godfrey. Do you go under any other Name but Booth?

Booth. No; nor never did: My Lord, I can't go in Safety for the Tumult.

L. C. J. Mr. Sheriff Pilkington, send your Officers to protect him; I shall require him at your Hands.

Mr. Turberville was call'd again.

Foreman. When had you this Discourse with my Lord Shaftsbury, and where?

Turb. It was one Morning about the Beginning of February, I think; Mr. Shepherd shew'd me into his Room at the upper End of the Dining-Room.

Foreman. When did you communicate this to any Body?

Turb. About the 4th of July I gave my first Information to Mr. Secretary Jenkins.

Foreman. Did not you tell Mr. Herbert you knew nothing of this Matter?

Mr. Attorney. My Lord, this is not to be allow'd; this is private Instructions.

L. C. J.

L. C. J. Are these Coffee-house Discourses, think you, Ground enough to cavil at the King's Witneffes.

Foreman. My Lord, Mr. *Herbert* himself declar'd this to me some Months ago.

Turb. I don't remember I ever spoke one Word to Mr. *Herbert* in my Life.

Mr. *Papillon*. Were not you one of them that petition'd the Common Council, and declar'd, you were tempted to be a Witnefs against your Conscience?

Turb. It was drawn by the Order of Mr. *Colledge*, and I sign'd the Petition; but I never read it, or knew what was in it.

L. C. J. Mr. *Richardson*, bring in some of those People that make a Noise.

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Turb. My Lord, I go in Danger of my Life, the People threaten to stone me.

Mr. *Papillon*. What was your Design in Petitioning?

Turb. We were told that the City would advance us Money if we did petition.

Mr. *Papillon*. Did any Body move you to be a Witnefs against my Lord *Shaftsbury*?

Turb. No, I did it voluntarily: I hope your Lordship will take Care we been't knock'd on the Head. The Witneffes complain again of being insulted.

L. C. J. That we give in Charge to Mr. *Sheriff*; it is a Reflection not only on the City, but on the whole Kingdom to suffer such Disorders: Mr. *Sheriff*, look the King's Witneffes come to no Hurt.

Mr. *John Smith* call'd again.

Mr. *Papillon*. Did not you go by the Name of *Barry*?

Smith. Yes, I did: It was usual for Popish Priests to go by several Names.

Mr. *Papillon*. What Religion are you of?

Smith. I am a Protestant, and have been so many Years: I was perverted to the Popish Religion, and afterwards became a Protestant again.

Mr. *Papillon*. When did you receive the Sacrament?

Smith. About three Months ago, in *Bow Church*.

Mr. Papillon. Was you desir'd to be a Witness, and when did you give your Evidence first?

Smith. I gave my Evidence voluntarily to Mr. Secretary Jenkins, a little after my Lord Shaftsbury was committed, I believe—— My Lord, they bid the People stone us to Death; and when we were at the Tavern Dr. Otes's Man came out and gave the Rabble a Bottle of Wine, and bid them knock us down.

L. C. J. What was the Man's Name?

Otes. My Lord, I keep half a dozen Men, but I know nothing of it.

L. C. J. I hope you keep no Men to affront the King's Witneses.

Mr. Papillon. When did you hear these Words?

Smith. Which Words?

L. C. J. He told you he discours'd my Lord Shaftsbury several Times, and at sometimes he said these Words, and at other Times other Words; and for you to catch him upon a Question, it does not shew a fair Inclination.

Mr. Papillon. We are not for Catches, we desire but to discover the Truth: Did you hear any other treasonable Words than what you heard at my Lord's House?

Smith. No, I did not.

Mr. Papillon. Are you an Englishman or an Irishman?

Smith. If I were an Irishman, wou'd that prejudice my Evidence.

L. C. J. I hope the Jury have more Discretion than to think an Irishman is not a good Witness.

Mr. Papillon. Did you petition the Common-Council?

Smith. I never petition'd the City, or had a Farthing of them, nor have any Occasion to be beholden to your Common-Council.

Mr. Papillon. Have you no Allowance from any Body?

L. C. J. Is that a pertinent Question; or do you intend to ask him if he is brib'd to give his Evidence, if you mean to speak plain.

Bryan

Bryan Haynes was call'd again.

Papillon. When did you give in your Information of this Matter?

Haynes. The Day that I was taken, the 28th of June last, which was before my Lord was committed.

Papillon. Did you never give any Information to a Justice of Peace of a Design against my Lord Shaftsbury, and what was that Design?

Haynes. I made Affidavit before the Recorder, in March last, that Mr. Fitz-Gerald, told me he had given it under his Hand to the King, that the Earl of Shaftsbury did resolve to set the Crown upon his own Head, or otherwise, to turn the Kingdom into a Commonwealth.

Mr. Papillon. Did my Lord say the same Things every Time you discours'd with him.

Haynes. The last Time I spoke with him was about the Time of Fitz-Harris's Tryal, at a Pastry-Cook's in Ironmonger-lane; he wanted me to explain what I meant by the tall Man I mention'd in my Narrative; and I believe I had an Hour's Discourse with my Lord, and I ask'd my Lord what Religion the King was off? Truly, says he, he has no more Religion than a Horse. When he came first, they said, he had a Tincture of Popery, but since, he has degenerated from all the Principles of Christianity, for he is just like a perfect Beast.

Papillon. Were you ever a Witness for my Lady Windham?

Haynes. No, Sir: But she arrested me because I said I lay with her.

John Macnamarra was call'd.

Papillon. When did you hear my Lord say that the King deserv'd to be depos'd, &c.

John Macnamarra. In the Beginning of April, at his own House; and Mr. *Forry* was by.

Papillon. When did you make Information of this?

John Macnamarra. Some Time before my Lord's Commitment, I inform'd Mr. Secretary Jenkins of it.

Papillon. Did not you petition the Common-Council for Relief?

John Macnamarra. Yes: I did sign a Petition, but I never read it, or knew what was in it: I heard that Mr. Colledge promoted it by my Lord Shaftsbury's Advice.

Dennis Macnamarra was call'd.

Papillon. Who introduc'd you to my Lord Shaftsbury?

Dennis Macnamarra. My Brother, the last Witness, introduc'd me, the latter End of *March* or the Beginning of *April* last; and Mr. *Ivey* and my Brother was by when my Lord had the Discourse I mention'd.

Papillon. When did you give this Information?

Dennis Macnamarra. A great while before my Lord was committed, I gave it to Mr. Secretary *Jenkins*.

Mr. Papillon. My Lord, I wou'd ask him if he has a Pardon?

L. C. J. North. The Prisoner may make Exceptions to the Witness, but there are none to be made here.

Papillon. We must satisfy our Consciences, and that very much depends upon the Credibility of the Witnesses.

L. C. J. Wou'd you ask him to accuse himself?

Papillon. If he has a Pardon, he is in *Statu quo*: Suppose some of them have been guilty of Poisoning, some of Felony, some of Robbing on the Highway, we do but ask them if they are pardon'd; but if you do not give us Leave to ask them, we must forbear.

L. C. J. North. I do not think it proper to ask.

Edward Ivey was call'd.

Mr. Papillon. When did you hear my Lord Shaftsbury speak the Words you mention?

Ivey. I have discours'd with my Lord several Times, but those Words were spoken the latter End of *March*, or the Beginning of *April*; both the *Macnamarra's*, I think, were present when he spoke them.

Papillon.

Papillon. When did you make this Information, and where?

Ivey. Some Time before my Lord's Commitment to the Secretary of State.

Papillon. There are two Months between the Words and my Lord's Commitment: How came you to conceal them so long?

Ivey. I made it as soon as I cou'd.

Foreman. Do you know of any other treasonable Words spoken by my Lord?

Ivey. I have declar'd what I know.

Bernard Dennis was called.

Papillon. When was the Discourse you had with my Lord *Shaftsbury*?

Dennis. In *March*, three or four Days after my Lord came from *Oxford*; and his Gentleman, Mr. *Shepherd*, was in the Room, and more of his Servants, but whether they heard them I cannot tell.

Papillon. When did you make this Information?

Bernard Dennis. In *June*, before Mr. Secretary *Jenkins*.

Papillon. Why did you conceal it so long?

Dennis. Because I was in the City so long.

Papillon. Did you ever muster your 400 Men in *Ireland*?

Dennis. Upon my Word, I advis'd some of them to be ready.

Papillon. How long have you been a Protestant?

Dennis. Since *February* last.

Papillon. In what Place in the House had you this Discourse with my Lord?

Dennis. In the Great Chamber: I don't know whether you call it the Hall or the Parlour.

Papillon. Did he say any treasonable Words in any other Place?

Dennis. Yes: In the Long Gallery in his own House. He said he wou'd have a Commonwealth, and extirpate the Crown, &c.

Papillon. Are not all your Kindred Papists?

Dennis. Most of them are.

L. C. J. North. Now you have ask'd these Questions, Gentlemen, you had best go and consider of your Evidence; you are to consider whether it be fitting for the King to call my Lord *Shaftsbury*

to account for treasonable Words: I observe you ask'd whether the Parliament debated about an Association; I am not certain whether it related to that Paper or no, but I must say, I never heard the Contents of that Paper before, and hope you will consider it well: One of the Ends, I think it proposes, is to destroy the mercenary Forces about London and Westminster, and the Government to be by a Majority of Members of Parliament, without the King; and this being found under Lock and Key in my Lord's Study, there is a great Presumption upon it; nor doth it import an Association by Act of Parliament. I hope you will consider your Oaths, and give every Thing its due Weight.— Will you have the Statute read?

Jury. We will read it above.

Then the Jury withdrew, and afterwards return'd the Bill Ignoramus, whereupon the People shouted.

Page 851:

The TRIAL of ARCHIBALD Earl of ARGYLE, for High Treason, with some Proceedings previous thereto, the 35^d Car. 2, 1681.

The Earltakes the Test, and declares his Sense of it.

EDinburgh the 3^d of Novemb. 1681, his Royal Highness the Duke of York being present in Council, the Earl of Argyle took the Test, as a Privy-Counsellor, having first declar'd his Sense, and given this Explanation of it. He said, *That he had consider'd the Test, and was very desirous to give Obedience as far as he could. He was confident the Parliament never intended to impose contradictory Oaths, therefore he thought no Man could explain it, but for himself; and accordingly, That he took it as far as it was consistent with itself and the Protestant Religion, but he meant not to bind up himself in his Station, and in a lawful Way to wish and endeavour any Alteration he thought to the Advantage of Church and State, nor repugnant to the Protestant Religion or his Loyalty.*

The Earl having taken his Place at the Board, the Council's Explication of the Test was read and debated, and put to the Vote, and pass'd, the Earl

Earl not voting thereto. This Explication was as follows, (viz.) 1. That tho' the Confession of Faith, ratify'd in Parliament 1567, was fram'd in the Infancy of Reformation, and deserves its due Praise, yet, by the Test, we do not swear to every Proposition or Clause therein contain'd, but only to the true Protestant Religion, founded on the Word of God, contain'd in that Confession, as it is oppos'd to Popery and Fanaticism. 2. That by the Test, no Invasion or Encroachment was made or intended upon the intrinsic spiritual Power of the Church, or Power of the Keys, as it was exercis'd by the Apostles and the Primitive Church in the first three Centuries: All which was still reserv'd entirely to the Church. 3. That the Oath and Test was without any Prejudice to Episcopacy.

Page 850.
The Council's
Explication of
the Test.

The 4th of November, 1681, the Earl being about to take the Test, as a Commissioner of the Treasury, and having upon Command produc'd a Paper, importing the Sense in which he took the Test the Day before: It was resolv'd he could not sit in Council, not having taken the Test according to the Sense and Meaning of the Act.

Resolv'd the Earl
could not sit in
Council, not ha-
ving taken the
Test according
to the Meaning
of the Act.

Page 853.

The 8th of November, 1681, the Privy-Council thought fit to send a Letter to his Majesty, to acquaint him that the Earl of Argyle, after some Delays, came to the Council to take the Test as a Privy-Counsellor, and spoke some Things which were not then adverted to; and that when the Earl came to take the Test again, as a Commissioner of the Treasury, and was commanded to take it simply, he refus'd so to do; but gave in a Paper, shewing the only Sense in which he would take it. Upon Perusal wherof, they found it to contain many scandalous Reflections on the late Act of Parliament for taking the Test; and therefore they had thought fit to send the Earl to the Castle of Edinburgh, and transmit the Paper to his Majesty, being expressly oblig'd to both by his Majesty's Laws. And they had commanded his Majesty's Advocate to prosecute the said Earl for being the Author, and having given in the said Paper, and expected his Majesty's farther Commands.

A Letter to the
King, that the
Earl refus'd to
take the Test
simply, and had
given in a Paper
reflecting upon
it; whereupon
they had commit-
ted him to the
Castle.

November

His Majesty directs them to prosecute him, but not to proceed to Sentence without acquainting him.

November the 15th, his Majesty was pleas'd to send Answer to the Privy-Council, wherein he approves all that they had done in relation to the Earl, and authorizes them to proceed in their Prosecution against him; nevertheless, before Sentence, to give his Majesty a particular Account of what he should be found Guilty of, to the End, that being fully inform'd thereof, he might signify his farther Pleasure in that Matter.

Before the Counsel receiv'd his Majesty's Answer, they had caus'd his Majesty's Advocate to exhibit an Indictment against him for slandering and depraving the Laws, &c. but upon Receipt of his Majesty's Answer, they order'd a new Indictment to be preferr'd, containing, besides the former Points, the Crimes of Treason and Perjury.

The Indictment for High Treason &c. in publishing a Seditious Libel, being a pretended Explanation of the Test.

Page 854.

' The Indictment sets forth, That albeit, by the Laws of all well-govern'd Nations, and by the municipal Laws and Acts of Parliament of this Kingdom, (and particularly by the Acts in the Indictment cited) all Leasing-makers, and Tellers of them, are punishable with Tinsel of Life and Goods. And whereas by the 107th Act Par. 7. Jac. 1. It is statuted, That no Man put another Sense upon the Statutes than the Makers intended and the Statute imports: And by the 10th Act, Par. 10. Jac. 6. It is statuted, That none of his Majesty's Subjects presume, or take upon him publickly to declare, or privately to speak, or write any Purpose of Reproach, or Slander of his Majesty's Person, Estate, or Government, or to deprave his Laws or Acts of Parliament, or misconstrue his Proceedings, whereby any Mistaking may be mov'd betwixt his Majesty, his Nobility, and Loving Subjects, on Pain of Death. And whereas by an Act of 1 Car. 2. it is statuted, That whoever shall, by Writing, Libelling, or Remonstrating, declare any Words or Sentences to stir up the People to the Dislike of his Majesty's Prerogative and Supremacy in Causes Ecclesiastick, or the Government of the Church by Bishops, &c. should be incapable of exercising any Office, Civil, Ecclesiastick,

' cleriastick, or Military. And by the 130th Act,
 ' Par. 8. Jac. 6. it is enacted, That none presume
 ' to impugn the Authority of the three Estates,
 ' or procure Innovation, or Diminution of their
 ' Authority, under the Pain of Treason. And it
 ' is much more Treason to alter, add to, or make
 ' new Laws, which is his Majesty's highest and
 ' most incommunicable Prerogative. Yet true it is,
 ' that albeit his Majesty did not only bestow on
 ' the said *Archibald* Earl of *Argyle*, these vast
 ' Lands, &c. justly forfeited to his Majesty, by
 ' the Crimes of the Earl's Father, and also par-
 ' don'd and remitted to the present Earl the
 ' Crimes of Leasing-making, and of misconstru-
 ' ing his Majesty's and the Parliament's Proceed-
 ' ings, for which he had been condemn'd to die,
 ' and had rais'd him to the Title and Dignity of
 ' an Earl, and made him a Member of all his Ma-
 ' jesty's Judicatories; yet the said Earl, being put
 ' to take the Test by the Counsel, instead of tak-
 ' ing it in the genuine Sense, as the Act requires,
 ' without any Equivocation or Mental-Reserva-
 ' tion, he did declare against and defame the
 ' said Act; and to corrupt others, he had drawn
 ' his Sense up in a Libel, and dispers'd Copies
 ' thereof, in order to make ill Impressions on the
 ' People: That by his declaring in that Libel,
 ' *He had consider'd the Test, and was desirous to give*
 ' *Obedience as far as he could*, he insinuated, he was
 ' not able to give a full Obedience: By his saying,
 ' *he was confident the Parliament never intended to*
 ' *impose Contradictory Oaths*, he would induce the
 ' People to believe, the Parliament had been so
 ' impious and ridiculous to impose contradictory
 ' Oaths: That by affirming, *That every Man must*
 ' *explain it for himself, and take it in his own Sense*,
 ' all Oaths and Laws are render'd Useless; for
 ' the Legislator cannot be sure that the Oath im-
 ' pos'd by him, will bind the Takers according to
 ' the Design and Intent for which he appointed
 ' it; and the Legislative Power is thereby settled
 ' in the Subject, who is to take the Oath: And
 ' by his saying he took the Test, *so far only as it*
 ' *was consistent with itself and the Protestant Religion*,
 ' he

His Father's
 Estate restor'd
 him by the King.

The Earl former-
 ly pardon'd him-
 self.

Page 855.

‘ he maliciously intimated to the People, That
 ‘ the Oath was inconsistent with itself, and with
 ‘ the Protestant Religion; thereby mis-represent-
 ‘ ing his Majesty and the Parliament in the highest
 ‘ Degree: And by his declaring, *That he did not*
 ‘ *mean by taking the said Test to bind up himself from*
 ‘ *wishing and endeavouring any Alteration in a lawful*
 ‘ *Way, that he should think fit for advancing of Church*
 ‘ *and State*, he did, by his Example, invite others to
 ‘ think themselves loos’d from that Obligation, and
 ‘ teach them, that it was lawful to make any Al-
 ‘ teration, either in Church or State, as they
 ‘ shou’d think fit: And that his Conclusion, (*viz.*)
 ‘ *This I understand as a Part of my Oath*, was a treasona-
 ‘ ble Invasion upon the Royal Legislative Power,
 ‘ as if it was lawful for him to make to himself
 ‘ an Act of Parliament, (for he who could make
 ‘ any Part, might make the whole.) And of these
 ‘ Crimes, the said Earl was Actor, Aet and Part;
 ‘ which being found by the Assize; he ought to
 ‘ be punish’d with the Pains of Death, &c.’

The Earl peti-
 tions that Sir Geo.
 Lockhart may be
 his Counsel.

A General Order
 for any Counsel-
 he shou’d chuse,

The Earl of *Argyle* petition’d the Lords of the
 Council, that they would give special Order and
 Warrant to Sir *George Lockhart*, his ordinary Ad-
 vocate, to be his Advocate in the aforesaid Crimi-
 nal Proves, which the Council refus’d, but
 made a general Order, that they allow’d any
 Lawyer, the Petitioner should employ, to plead for
 him.

Whereupon the Earl petition’d again, shewing,
 That by Act of Parliament, in case an Advocate
 refus’d to be concern’d, the Judges were to com-
 pel him; but the Council adher’d to their former
 Order.

Then the Earl made a Letter of Attorney to
Alexander Dunbar, his Procurator, for requiring
 Sir *George Lockhart* to plead for him, and executed
 an Instrument, requiring the said Sir *George Lock-*
hart to appear and plead for him, and caus’d it to
 be sery’d upon him.

Page 858.
 The Trial comes
 on.

Wednesday the 12th of December being appointed
 for the Trial, the Earl of *Argyle* was brought into
 Court, the Earl of *Queensbury* being then Justice-
 General,

General, and the Lords *Nairne*, *Collington*, *Forret*, *Newton*, and *Hirkhouse*, Lords of Justiciary sitting in Judgment.

The Earl having been arraign'd, and the Indictment read, he made a Speech to the Court: He said, he look'd upon it as the Privilege of the meanest Subject, to explain his own Words, and he thought it wou'd be impossible to make any that know him believe he intended any Thing but what was honest, honourable, and loyal, tho' he did not explain himself; for he said he had from his Youth serv'd his Majesty faithfully, and in Times of the greatest Difficulty; nor had he receiv'd a Frown from his Majesty these thirty Years: That his first Appearance in the World was to serve his Majesty as Colonel of his Foot-Guards; and after the Misfortune at *Worcester*, and *Scotland* was over-run by the Usurpers, he alone, with his Friends, were in Arms for the King in the Year 1652, and that he stood out 'till the Earl of *Middleton*, his Majesty's Lieutenant-General, gave him Orders to capitulate: That he was forefaulted by the Usurpers, contrary to their Faith, and kept in one Prison after another 'till the *Restoration*, because he wou'd not engage not to serve his Majesty.

The Earl's Speech at his Arraignment.

He argues his past Services.

Page 859.

That when he was prosecuted by the Parliament in 1662, his Majesty being entirely satisfy'd of his Loyalty, he did not offer to plead by Advocates; and his Majesty was pleas'd to pardon his Life, and restore him to his Title and Fortunes, and put him in the most eminent Judicatories; and he hop'd his Majesty had always found him faithful: That the next Occasion he had to shew his Zeal for his Majesty was in 1666, when the Infurrection was at *Pentland Hills*, when he seiz'd all the Gentlemen in *Kintyre* that had not taken the Declaration, and sent a Gentleman to General *Dalziel*, to receive his Orders when they were going to the Action at *Pentland*.

That he had shewn his Readiness to serve his Majesty, in asserting the lineal, legal Succession of the Crown, and offering proper Supplies to his Majesty and his Successor, &c. and thou'd he now

be

be troubl'd, he said, for innocent Words spoken, without any ill Design, but for the clearing his own Conscience, especially since many of the Orthodox-Clergy Bishops, and whole Presbyteries, had scrupled the same Thing, and an eminent Bishop had writ a Treatise that was read over in Council, and allow'd to be printed, which contain'd the same Expressions he was charg'd with. And how could it be imagin'd, he said, that he shou'd do any Thing contrary to the Test, who had shew'd his Zeal to all the Ends of it in the whole Course of his Life: There was nothing to support the Charge but Words, wrested not only contrary to his Sense, but to his Principles, his Interest and Duty; and that my Lord-Advocate himself must know, from the Acquaintance he had with him, that he was neither Papist nor Fanatick, but truly loyal in his Principles and Practices.

He produces a Letter, wherein the King acknowledges his Services.

After this Speech, a Letter from his Majesty to the Earl, when he was Lord *Lorn*, was read, dated at *Cologne*, Dec. 10, 1654, wherein his Majesty takes Notice of his Services against the Rebels, and promises they shall not be unrewarded.

Page 860.
And my Lord
Middleton's Letter to the same Effect.

Then the Earl of *Middleton's* Orders to him, empowering him to capitulate with the *English*, were read, wherein he takes Notice of the great Services the Earl of *Argyle* (then Lord *Lorn*) had done his Majesty.

The Earl of *Glencairn's* Letter to him.

And the Earl of *Glencairn's* Letter to him when he was Lord *Lorn*, was also read, wherein he testifies the Esteem he had for him, and the Sense he had of his Loyalty to the King.

Page 861.
Sir G. Lockhart's Argument for the Earl.

After the reading these Orders and Letters, Sir *George Lockhart* enter'd upon the Earl's Defence.

He alledges, that the Libel is not Relevant; for that all criminal Libels ought to be founded upon express Acts of Parliament; and the Matter of Fact, libell'd to be the Contravention of those Laws, must be direct Contraventions, and not argu'd by Way of Implication and Inference.

But more particularly, the Charging the Panel [the Prisoner] with the Crime of Leasing-making, and depraving his Majesty's Laws upon the Act first cited, tho' such Explication as is pretended

was

was prov'd, is most unwarrantable; for upon Perusal of those Acts, they only concern the Case of Leasing-making, tending to Sedition, and creating Discord between his Majesty and his Subjects; and the said Acts were never understood or libell'd upon in any other Sense.

And nothing of that Nature can be inferr'd from the Panel's alledg'd Explication, if the whole Tenor of his Life be consider'd; and his Majesty, in his Letter, has shewn that he did ever most zealously and vigorously promote his Majesty's Service; and in the Earl of *Middleton's* Letters (his Majesty's General) were high Expressions of the Panel's Loyalty, and great Services he had perform'd; and his Majesty being conscious thereof, had intrusted the Panel with the greatest Employments; and it is a rational Presumption in all Laws, that the Expressions of Persons who by the Tenor of their Lives have abundantly express'd their Loyalty, shou'd ever be interpreted in the best Sense, and not by Way of Implication, to infer Crimes from the same which the Party never meant or intended.

And farther, these Words being offer'd before a publick Judicature, only to explain the Panel's Apprehension what he conceiv'd to be the true Meaning of the Act enjoying the Test, this cou'd never be interpreted a Leasing-making with any seditious Intent, or, indeed, infer any Crime, supposing he had err'd and was mistaken in his Opinion concerning the Act of Parliament; for Men may mistake and differ very much as to the Sense of them, and even the greatest Lawyers often do. And it is not so much as alledg'd that the Panel ever used any reproachful Speeches of the said Act, or his Majesty's Government, or urg'd any Thing against it, till he was requir'd on this Occasion to take the Oath, and then he only offer'd what he apprehended to be the Sense of the Act.

And it is not only allowable by the Opinions of all Divines and the Laws of all Nations, but commendable, where the Party has any Scruple as to the Matter of the Oath, that he shou'd declare

in

in what Sense he is able to take it; and whether his Scruples were just or groundless, they do not cast any Reflection upon the Justice or Prudence of the Parliament who impos'd it: Nor was ever such a Declaration for the clearing and exonerating the Party's Conscience, in the Opinion of any Lawyer or Divine, constru'd to be the Crime of Leasing-making, or of defamatory Libels, or depraving of publick Laws, or reproaching the Government; but on the contrary, by the universal Opinion of all Protestant Divines, any reserv'd Senses or Equivocations are abhor'd and detested.

And it is offer'd to be prov'd, that before the Panel was requir'd to take the Oath in Council, many Papers were written, even by the Orthodox Clergy, and presented to the Bishops in the Name of the Synods and Presbyteries, which charge the Test with Contradictions and Inconsistencies; whereupon some of the Bishops wrote an Answer, call'd, *A Vindication of the Test, for clearing the Scruples, Difficulties, and Mistakes, that were objected against it*; which was allow'd by the Council to be printed.

Page 863.

That in the Explication pretended to be his, he does no where directly charge the Oath and Test to contain Matters of Inconsistency and Contradiction, as these Authors do; but the Crime is made out only by Implication and Inference, and violently wresting his Words to a Sense they cou'd never bear; and yet those Authors were never reputed guilty of the infamous Crimes libell'd, viz. *Treason, Leasing-making, Perjury, &c.*

That Papers having been dispers'd, insinuating that there were Inconsistencies and Contradictions contain'd in the Oath, the Earl, by asserting *That the Parliament never intended to impose contradictory Oaths*, was so far from being guilty of the Crimes mention'd in the Libel, that the said Expression was an high Vindication of the Honour and Justice of the Parliament, against the Calumnies and Misrepresentations cast upon it; and it gave just Occasion to the Prisoner to declare his Sense of the Oath, when he found such various Senses put upon

upon it. As to that Part of the Libel founded on *Act 130, Par. 8, Jac. 6.* which makes it High Treason to impugn the Authority of the three Estates, and the Prisoner's assuming legislative Power by his Explication.

He answers, That Act can't affect him, for it appears to be levell'd only against such as deny the King and Parliament to have a legislative Power, or that any of the three Estates were not essentially requisite to constitute a Parliament; and there is nothing in the pretended Explication that has any Tendency this Way.

And it is admir'd with what Shadow of Reason the Earl can be charg'd with assuming a legislative Power, by declaring in what Sense he was contented to take the Oath, it being the universal Practice of all Nations to admit this Liberty; and the Government might either have accepted or rejected his private Sense, which he offer'd only for the Exoneration of his own Conscience: Nor can he, with any more Reason, be charg'd with the Crime of Perjury on this Account; if they did not think the Law was satisfy'd by this Explication, they cou'd but adjudge him a Refuser of the Oath; and as the Explication does not import all or any of the Crime libell'd, so if there were any Ambiguity in his Expressions, they ought to be interpreted in the most benign and favourable Sense; and it was never refus'd to any Person to put a congruous Sense upon his own Words, especially to a Person of his Quality, and one who had given such undeniable Evidences of his Loyalty.

That those Words, *He was ready to give Obedience as far as he cou'd,* did not import the Parliament had impos'd an unlawful Oath, but only shew'd the Panel's Doubtfulness and Scrupulosity in the Matter: And they might have argu'd much more strongly, if he had absolutely refus'd the Oath, that he suggested thereby they had enjoin'd what it was impossible to comply with; but, in Truth, such Implications and Inferences were irrational, and there is not in either Case any Im-

peachment of the Justice or Prudence of the Legislator.

As to those Words, *I think no Body can explain it but for himself*, they imported no more than that every Man ought to take it in that Sense he apprehended to be the genuine Sense of the Parliament: And as to his Saying, *He takes it as far as it is consistent with it self and the Protestant Religion*, he neither intended or express'd more than that he took it as a true Protestant.

As to that Expression, *He does not bind up himself in a lawful Way to endeavour any Alteration he thinks for the Advantage of Church and State, &c.* he thought it cou'd never be inferr'd from the Oath, but that Persons might, notwithstanding, concur in their Stations, in a lawful Way, in any Law, to the Advantage of Church or State, and it wou'd be contrary to his Allegiance to take the Oath upon other Terms.

And by those Words, *This I understand as Part of my Oath*, he cou'd not be said to assume a legislative Power; his plain Meaning was, that this Sense and Explication was Part of his Oath, not of the Law which impos'd the Oath: And farther, the Earl's Sense was accepted, and he was allow'd to take his Place at the Council-Board accordingly; from all which he infers, that the said Explication cannot import all or any of the Crimes libell'd.

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The King's Advocate's Argument and Plea against the Earl of Argyle.

The Advocate's
Argument against
the Earl.

His Majesty, to secure the Government from the rebellious Principles of the last Age, and the unjust Pretexes of the present, and to secure the Protestant Religion and the Crown, call'd a Parliament, wherein this excellent Test was resolv'd on, as a Security against the old juggling Principles of the Covenant, wherein they still swore to serve the King in their own Way: But the Earl of Argyle, by his Paper, has discover'd a Way to evade this Test, so as no Man shall be bound by it; for if a Man shall swear to obey only as far

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as he can; and as far as he conceives it consistent with the Protestant Religion, and with it self, and reserve to himself a Power of making any Alteration he shall think consistent with his Loyalty, what Man can be bound? The Government must be as insecure as before the Act was made; the Taker is no farther oblig'd than he pleases; but every Man's Conscience (which in this Age includes Humour and Interest) must be the Rule of the Taker's Obedience.

By the 10th Act, *Par. 7. Jac. 6. No Man is to interpret the Statutes otherwise than the Makers understood;* but here the Taker will put his own Sense upon them, which if it be allow'd, he can never be punish'd for Perjury; if he should be charg'd with making Alterations contrary to his Oath, he might say he only took the Oath so far as it was consistent with the Protestant Religion, and with a *Salvo* that he might make any Alteration he thought consistent with his Loyalty; for in these Generals he reserves to himself a Power of judging what is consistent with the Protestant Religion and his Loyalty; and this is, indeed, a very fine Security for a Government: We are not only hereby absolv'd from this Oath, but it shews us how we may be absolv'd from all Oaths, and all Obedience, and strikes at the Root of every Law as well as this.

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It is the Opinion of all Divines and Lawyers, that every Oath is to be taken according to the Intention of him to whom it was made; nor was there any Danger to a tender Conscience in this Case, since there was no Force put upon the Earl; but he took it for his own Advantage, and might have abstain'd.

And the Earl is clearly guilty of Contravention of the 10th Act, *Par. 10. Jac. 6.* prohibiting the writing any Thing whereby his Majesty's Government is reproach'd, or his Proceedings misconstru'd, so as to create a Dislike between the King and his People; for by his saying he takes the Oath only as far as it is consistent with it self and the Protestant Religion, it must necessarily be concluded, that in several Instances it is inconsistent

with it self and the Protestant Religion; and can any Thing be a greater Reproach to the Parliament, or a greater Ground of Mislike among the People?

And whereas tis said these are only Inferences, it is answer'd, there are some Offences which the Law can only forbid in general, and there are many Inferences which are as strong and natural, and reproach more effectual than the plainest Defamations in the World; direct Reproaches have not wounded the King so deep as the many seditious Insinuations of this Age and the last.

There are so many various Methods of Slander and Reproach, that it is impossible they can be specify'd in any Law; and in all the Laws concerning Leasing-making, the Judges are to consider what comes under the general Words: Now from this Paper it must be inferr'd that the Parliament has made a very ridiculous Oath, inconsistent with it self and the Protestant Religion; that is the natural Tendency of the Words, they will admit of no other Sense; and shall a Man be permitted, under Pretence of exonerating his Conscience, to defame the Government? Have we not seen the King most defam'd by Covenants, enter'd into upon Pretence of making him great and glorious, by Remonstrances made to take away his Brother and best Friend, on Pretence of preserving the Protestant Religion and his Sacred Person: Those of the last Age declar'd *they thought* themselves bound in Duty to obey the King *as far as that could consist with their Regard to the Protestant Religion and the Laws and Liberties*, which render'd all the rest ineffectual.

Page 867.

And whereas it is said there were other Explications of the Test dispers'd about before the Earl offer'd his, and that the Council it self gave an Explication of it, I answer, If this Paper be Leasing-making, or misconstruing his Majesty's Proceedings, and treasonable, as is charg'd, a thousand Offences of the same Kind won't excuse it: And in the Prosecutions of those who were concern'd in the late Rebellion, it was not admitted as a Defence, that the Nation was over-run with these Crimes, and they were thought Duties in those

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Days; the Example of Multitudes is no Excuse, nor does the Council's causing an Answer to be written to those Explications of the Test shew they allow'd of such Explications as reflected on the King and Government, but that they condemn'd them: And as for the Council's hearing and allowing the Earl's Explanation, it was fit they shou'd consider of it before they order'd a Prosecution, nor cou'd their Allowance hinder the King's calling him to an Account.

Tho' Divines hold a Man ought to swear without any Evasion, they do not say he shou'd swear so as to be bound to nothing, as the Earl contends: If the Earl had not been clear he ought to have abstain'd, or Men shou'd tell, in plain Terms, in what Sense they are bound to the State, and not use such ambiguous Expressions as are a thousand Times more doubtful than the Test it self, and is, in Effect, nothing but what the Taker pleases.

And as it is Treason to endeavour any Alteration of the Government, either in Church or State, by a private Person, tho' he think it for the Advantage of both, this the Earl is justly charg'd with; for he does not say such Alterations as the King shall think fit, or are consistent with the Laws and Statutes of the Realm, but any such *as he shall conceive to be lawful*; so that he is the sole Judge of this, and his Loyalty to be the Standard; nor did the Covenanters in the last Age, or those who are daily executed now, deny they ought to obey the King, but they say they are bound to obey the King no farther than as his Commands are consistent with the Laws of God and Nature, and of this Kingdom, and with the Covenant; their Treason lies in this, and when you ask them who shall be Judge of this, they still make themselves the Judges.

Your Lordships of Justiciary will consider how dangerous it will be to this Kingdom, and how ill it will sound in other Kingdoms, that Men shou'd be allow'd to reserve to themselves the Liberty of making any Alteration they think fit in Church and State, as to the Legality whereof they

Page 868.

themselves are to be Judges; we seem to have the Steps of our rebellious Progenitors, whose great Defection and Error was, that they thought themselves, and not the King, the Authors of Reformation both in Church and State.

As to the Perjury, the Earl being bound by the very Oath to swear in the genuine Meaning without any Evasion, he has sworn so as to evade every Word; and since he has not sworn in the Sense of the Makers of the Law, but his own, he is guilty of Perjury.

Sir John Dalrymple's Defence and Plea for the Earl of Argyle, by Way of Reply to the King's Advocate.

Sir John Dalrymple's Reply in Behalf of the Earl.

It cannot be pretended that the Scruples which have been mov'd concerning the Test, did arise from the Panel's Explication; for the same Difficulties were propos'd by Synods and Presbyteries long before the Panel was requir'd to take the Test: The Laws relating to Leasing-makers relate only to atrocious and wittul Insinuations or Misconstitutions of his Majesty's Person and Government, or the open depraving of his Laws; the restrictive Words are, *Whereby Seditions or Misconstitutions may be mov'd, rais'd, or engender'd, betwixt his Majesty and his Lieges*; now all these Apprehensions and Scruples being on Foot, and agitated long before the Panel's Explanation, cannot be apply'd to this Case.

And farther, there is not one Word contain'd in this Explanation but either the very same, or much worse, had been publicly propos'd and read in Council before, without the least Discouragement or Objection to them; and they having been universally approv'd in so high a Court, how can it be pretended that a Person having used the same Terms, or more inoffensive, shou'd incur the high and infamous Crimes libell'd thereby.

Not did the Panel officiously offer his Sense of the Law, but being enjoin'd by an Act of Council, and cited to that Purpose, he was oblig'd either to have refus'd the Test, or to declare what he thought the genuine Meaning of it, there be-
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ing many Objections against it. His Explanation tended to shew that he did not look upon them as well grounded, but that he was ready to take it in that Sense the Council had heard and allow'd: It is not disputed but that Laws and Oaths ought to be taken in the Sense of the Legislator, and when a Man comes to take an Oath, except his particular Sense agree with the genuine Meaning of the Imposer he cannot take that Oath; therefore where a Man is bound to take an Oath, if he gives in an Explication of the Sense which he, in his private Judgment, apprehends to be the genuine Meaning, if his private Sense does not agree with the Legislator's Sense, then the Imposer of the Oath, or he that has Power of tendering it, ought to reject him, as not fulfilling the Intent of the Law; but the Party can run no farther Hazard, or incur any other Penalty than what is impos'd on a Refuser: And where a Man takes an Oath in the Sense propos'd by Authority, and this is contrary to his own Sense, he is perjur'd; and had the Panel been of those loose Principles, that he might have evaded the Meaning and Energy of the Oath, by putting upon it what Sense he pleas'd, he wou'd have contented himself in the general Refuge of Equivocation or mental Reservation, and never have signify'd the Sense in which he took it, whereby he became absolutely fix'd to that particular Sense.

Oaths to be taken in the Sense of the Imposer.

Whoever takes an Oath in a Sense contrary to the plain Meaning of the Imposer is perjur'd.

It is acknowledg'd that a Person is guilty of Perjury, *si aliquo novo Commento* he wou'd elude his Oath, or does not fulfil it in the Sense of the Imposer; but here the Party, before he takes the Oath, declares the Terms in which he understood it, which is not *aliquo novo Commento* to elude it: Here the Panel publickly declares what he understood the Meaning of Authority to be, and had Grounds to believe he was not mistaken, when upon that Explanation he was allow'd to sit and vote in Council. It is admitted that the assuming a Power to make Laws is treasonable; but altho' the Panel declares his Explanation to be a Part of his Oath, he never meant to impose it as Part of the Law; and the Panel having declar'd

The TRIAL of the

this Explanation was *de natura rei*, imply'd in the Oath, he necessarily made this Explanation no Addition or Extention of the Oath, but a Part of the Oath.

As to those Words, *I do not mean to bind up my self in my Station, and in a lawful Way to wish and endeavour any Alteration, I think, to the Advantage of Church or State, not repugnant to the Protestant Religion and my Loyalty.* This Clause is so far from being treasonable, that every good Subject ought to say as much. The Words *lawful Way* shew, That by Alterations cou'd not be understood treasonable Alterations, but such Alterations as the Frailty of Human Affairs and Constitutions, and the Vicissitude of Things constantly require in the most compleat Constitutions: It is a rational Prospect; for if every Thing at present were done that could be done, for the Security of Religion and Government, there may occur Cases hereafter, that may require new Remedies and Alterations: Nor is there any Thing in the Panel's Explanation, that being rationally and naturally interpreted, can infer the Crimes libell'd, or any of them: And his known Principles and Practices do not only clear the Panel's Innocence, but place him beyond the Suspicion of such damnable Principles of which he has the greatest Abhorrence and Detestation.

And what Affront is it to the Government, that the Parliament have impos'd an Oath which the Panel is not able to take simply? It is not pretended, he has written or spoken against it, but only he has not been able to discern the Grounds on which it may be simply taken, which rather implies a Want of Sense, than any Crime. As to the last Words, *In so far as it is consistent, &c.* he means no more, than that the Parliament did not design to impose Contradictions; therefore, says he, I take the Test as consistent, and it must be consistent, if the Parliament did not impose Contradictions, as certainly they did not. In this Sense this Explanation was propos'd in Council, and allow'd, and therefore cannot now be charg'd on him as Criminal.

Sir

Sir George Lockhart's Second Plea for the Earl of Argyle, by Way of Reply to the King's Advocate.

Notwithstanding, the Oath was impos'd (as 'tis said) for the Security of the Government, and the Panel, by his Explication, as is pretended, does evade this Oath, by taking it only so far as it is consistent with the Protestant Religion and his own Loyalty, whereof he is the Judge; the Security of the Government is not at all endanger'd, tho' the Panel and a thousand more had simply refus'd the Test, or taken it in a Sense which does not satisfy the Law; for it is in the Power of Authority to consider, whether the Panel's Explication does satisfy the Act or not; and if not, nothing can be inferr'd, but that he is a Refuser of the Oath, and liable to the Disabilities in the Act of not undertaking a publick Trust: The Parliament design'd no more, than to make this the Qualification of such as were to be admitted to any publick Office, and not that the Party refusing, shou'd incur any farther Penalty.

Sir George Lockhart's Reply in Behalf of the Earl.

It is also insisted, that this was never accounted a Crime in others, who publish'd their Scruples and Objections against it in higher Terms; and the Lords of Justiciary are desir'd to take special Notice, that the Panel was cited to take the Oath before the Council publish'd their Proclamation for explaining it, wherein they declare, that it did not oblige to the whole Articles of the *Confession of Faith*, ratify'd by the Act of the 6th of *Jac.* several Articles whereof had occasion'd the Scruples and Difficulties, and alledg'd Inconsistency and Contradiction between the last Part of the Oath and the said Confession, and between some of these Articles and the Current of the Protestant Doctrine; therefore, if the Panel for the clearing and exonerating of his Conscience, thought it necessary to use the Expressions in the Explication Libel, and yet with so much Duty and Confidence of the Parliament's Justice, that they never intended to impose contradictory Oaths; and that he took it as far as it

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it was consistent with the Protestant Religion; not knowing then whether the whole Confession was to be reputed a Part of the Oath, and doubting concerning it, and which the Council thought since to be so great a Difficulty, as that it was necessary to clear it by publick Proclamation: How can this Court now believe, that all, or any of the Crimes libell'd, shou'd be inferr'd from all or any of the Expressions contain'd in the said Explication? But that on the contrary, the Panel's Scruples were just, and his Explication agreeable to the Law and Custom of all Nations, where the Party has any Scruples as to the Matter of the Oath enjoin'd: If his Sense did not agree with that of Authority, they cou'd but hold him as a Refuser of the Oath, but were not to look upon him as Criminal, or a guilty Person.

The Panel also offers to prove, that this Explication was agreeable to that Vindication of the Oath, written by the Bishop of *Edinburgh*, in Answer to the Objections and alledg'd Inconsistencies in it, which was publicly read in Council, and so far approv'd of, as to be permitted to be printed and publish'd.

And whereas 'tis pretended, that the Acts against Leasing-makers, and Depravers of his Majesty's Laws, take Place, where any Words or Expressions have a Tendency in themselves, or by Consequence or natural Inferences do reflect upon the Government, or mis-construe the King's Proceedings, and that the Explication was such.

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It is answer'd, that the 43d *Act*, *Par. 8. Fac. 6.* and the other Acts against depraving his Majesty's Laws, do require, that such Speeches be perverse and licentious Speeches; *ex natura sua probrosa*, and spoken *animo defamandi*, and such as will not admit of any other rational Construction which cannot be apply'd to this Case; and neither Law or Reason will infer or presume a Crime, where the Thing is capable of a fair and rational Construction, and where it is done publicly, in Presence of his Majesty's High Commissioner and Lords of the Council, of whom the Panel was a Member, (Persons intending to commit such Crimes,

Crimes, making Use of other Times and Places, and other Company, where their Suggestions and Insinuations may more probably prevail.) It can never be suppos'd, that a Person of the Panel's Quality, and one who had the Honour to serve his Majesty in the most eminent Stations, and receiv'd such transcendent Favours from him, shou'd, in the Presence of his Royal Highness and the Council, design to declare against and defame his Majesty's Government: Neither Law nor Reason will presume this.

As to *Balmerino's* Case, which has been cited, it was certainly a defamatory Libel on his Majesty's Royal Father, and the States of Parliament, in the highest Degree; wherein he suggested, that there were Innovations in the Protestant Religion, and that the Liberties and Privileges of Parliament were destroy'd, and other Things of that Nature, containing the highest Crimes of Treason and Perduellion, and were not capable of any good Sense or Interpretation; and his Prefaces and Professions of Loyalty were not indeed to be regarded in that Case.

As to those Words, *That he is not bound up by any Thing in this Oath not to endeavour any Alteration in a lawful Way*, it were strange, if an Act, design'd for the Security of the Government, shou'd bind up Mens Hands not to concur to its Advantage; and whereas it is pretended there was the like Clause in the Covenant, that is a Mistake; and if it had been so, the Argument is altogether inconsequential; for the Covenant was treasonable in itself, being enter'd into without his Majesty's Authority, and treasonable Glosses were put upon it: And how can the Panel be suppos'd to have any Respect to the Covenant, who had so often taken the Declaration, disowning and renouncing it as an unlawful Oath, and concurr'd in many Laws which condemn it as seditious and treasonable.

The Earl had renounc'd the Covenant.

And whereas 'tis pretended, that the Panel is guilty of Perjury, having taken the Oath in a Sense different from that of the Parliament, who impos'd it. It is answer'd, Perjury can never be inferr'd,

inferred, but by the Commission or Omission of something directly contrary to the Oath: 'Tis true, where an Oath is taken without any Declaration of the Sense of the Party that took it, it obliges *sub pena Perjurii*, in the Sense not of the Taker, but of the Imposer of the Oath; because, expressing no Sense, both Law and Reason presume there is a full Acquiescence in the Sense and Meaning of the Imposer; and then, if the Oath be not so taken, he that takes it, is guilty of Perjury. But no Man will affirm, if the Party, before he takes the Oath, declares, in express Terms, the Sense in which he takes it, that he can be guilty of the Crime of Perjury in any other Sense; for all Protestant Divines do advise, in the Case of a doubting or scrupulous Conscience, that they do express and declare the Sense wherein they can take it, and do abominate all Subterfuges and Evasions after taking the Oath.

The King's Advocate's third Plea against the Earl of Argyle.

The King's Advocate's 3d Plea against the Earl.

His Majesty's Advocate conceives he has nothing to reply to, unless it be that Objection, That the Act was design'd only to exclude Recusants from Offices, not to make them guilty of any Crime.

To which he answers, That is true, where one simply refuses, but this does not excuse the Earl for defaming the Law. He is not to be punish'd for refusing, but for defaming; If he had simply refus'd, the Government had been in no Hazard; but he would retain his Places, and take the Test in such Words as give the Government no Security.

It is his defaming the Law, as ridiculous and inconsistent with the Protestant Religion, and creating Mis-understandings between the King and his People, that puts the Earl in a worse Condition than him who simply refuses.

As to the Proclamation that was publish'd, it was design'd to obviate the Scruples of the Ignorant, and not for Members of Parliament, who should have known the Sense of their own Acts.

And

And it is conceiv'd, the Article of Treason is well grounded upon the Common-Law, which prohibits all Men to make any Alteration in the Government, and there needs no Statute for it: Had the Earl reserv'd a Power of proposing to his Majesty any Alterations, or of concurring with his Majesty in any Alterations, he might have done this very innocently; but giving himself that general Liberty of wishing and endeavouring any Alteration *he should think fit*, for the Advantage of Church or State, was the Crime; nor wou'd the Word *Lawful* make the Matter better; for the greatest Rebel in *Scotland* will bind himself to a lawful Obedience, provided he may be judge of the Lawfulness: The Covenant itself has not only the Words above cited, but they call the World to be Witnesses of their Loyalty and Sincerity.

The Loyalty of
the Covenanters,

As to rising in Arms, or opposing a lawful Successor, not a Covenanter in *Scotland*, but will say, *He will not do either, but in a lawful Way, and in his Station, and as it be consistent with his Loyalty*; but when they come to explain it, they will only do it as they think fit; they will be Judges themselves, and tell us, that defensive Arms are lawful, and that no Popish Successor ought to succeed, or any Successor, unless he subscribe the Covenant.

And whereas 'tis said, the Panel does not design to add any Thing as a Part of the Law, but as a Part of his Oath; it is answer'd, Since the Oath is Part of the Law, adding to the Oath, is adding to the Law.

And whereas 'tis said, the Crime of Perjury cannot be inferr'd, because 'tis allowable to declare in what Sense the Party takes it; that is true, where there are two dubious Senses, and he declares he takes it in one of them; because to whichsoever of the two he determines himself, the Legislature, in that Case, are sure of him; but 'tis not pretended here are two Senses, or indeed that the Panel takes it in any certain Sense; he does not specify what particular Clause is doubtful, but in general mysterious Words, wherein he
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can neither be follow'd or found out; he only takes it so far as it is consistent with itself and the Protestant Religion, squaring all by his own Loyalty: At this Rate, the Government is not secure of any Thing it enjoins; or can the Panel ever be punish'd as a Transgressor: And farther, Perjury may as well be infer'd by an equivocal evading Sense, *inter Furandum*, as well as by breaking the Oath afterwards, as appears from *Sanderson*, p. 138. And if Men are allow'd to put such Glosses upon an Oath, even while they swear, as to render it useless, how shall either Government or Commerce be maintain'd? And that this Interpretation eludes the Oath absolutely, has been made appear.

And the Earl may be said to have broken his Oath the first Day he swore it, when he said he took it without any Evasion; and yet the next Day gave in this evasive Explanation, which is inconsistent with it: And it was the greater Crime that it was done in Council, because that was to make it more publick, and consequently the more to mis-represent the Government.

This Debate having lasted twelve Hours, the whole, according to Custom, having been taken by the Clerk in Writing, the Court adjourn'd to the next Day.

The Court sustain the Earl's Defence as to the Perjury.

But find the indictment sufficient, as to the Treason, &c.

The Jury consist of 15 Peers and Commoners.

Edinburgh the 13th of December, 1681.

The Court sustain the Earl's Defence, as to Perjury, having offer'd his Explanation before he took the Test.

But they sustain the Libel as to the Treason, and other Crimes libell'd, and the following Jury was sworn.

Marq. Montrose,	Lord Lindores,
Earl Middleton,	Lord Sinclair,
Earl Airlie,	Lord Bruntisland,
Earl Perth, P. C.	Laird of Godford,
Earl Dalhousie,	La. of Claverhouse,
E. of Roxburgh, P.	La. of Balmadon,
Earl of Dumfries,	Laird of Park-
Earl of Linlith-	Gordon.

gow, P. C.

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The Witnesses were John Drummond of Lundie, Sir William Patterson, Mr. Patrick Menzies, and H. Stephenfon. The Evidence.

They depos'd, That the 4th of November, the Earl gave in an unsubsrib'd Explanation of the Test, which he refus'd to sign; and one of the Witnesses depos'd farther, That he heard him make the same Explanation the Day before in Council; and that it was there accepted.

His Majesty's Advocate demanded, if the Earl wou'd make Use of his Exculpation for eliding the Perjury? He answer'd, That since they had sustain'd the Libel, as to the alledg'd Treason, he wou'd not trouble them about the Perjury; and besides, he thought that Matter clear enough of itself.

Then the Advocate taking Instruments, protests for an Affize of Error, in case the Affizes (the Jury) shou'd assoil or acquit; whereupon the Affizes withdrew, and after some Time return'd into Court, and their Verdict was read, (*viz.*)

The Advocate protests for an Affize of Error, if the Prisoner shou'd be acquitted.

The Affize having elected and chosen the Marquess of Montros to be their Chancellor. [Foreman]. They all, in one Voice, find the Earl of Argyle, guilty, and culpable of the Crimes of Treason, Leasing-making, and Leasing-telling; and find, by Plurality of Votes, the said Earl innocent, and not guilty of Perjury. The Prisoner convicted of all but the Perjury.

After which the Court adjourn'd, and the Council sent a Letter, dated the 14th of December, 1681, to his Majesty, acquainting him with the Verdict against the Earl; and signifying, that it was usual, and would be for the Service of his Majesty, that Sentence be pronounc'd thereupon; and that afterwards his Majesty might command Execution to be stay'd, and do as in his Clemency he shou'd think fit. The Council inform his Majesty of the Proceedings.

To which his Majesty gave an Answer dated the 18th of December, authorizing them to grant a Warrant to the Justice-General, &c. to pronounce Sentence against the Earl; but that all Execution shou'd be stay'd, till his farther Pleasure was known. His Majesty directs them to proceed to Sentence.

Before

The Earl escapes

Before the Letter arriv'd from his Majesty, the Earl had made his Escape; and it being read in Council, it was debated whether the Court cou'd proceed to pronounce Sentence in the Absence of the Earl; and after some Hesitation, it was resolv'd they might.

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The Court pronounces Sentence in his Absence.

And the Lords of Justiciary, notwithstanding a Petition from the Countess of *Argyle* to defer it, pronounc'd the following Sentence, which was afterward publish'd at the Market-Cross.

Forasmuch as it is found by an Assize, that *Archibald* Earl of *Argyle* is guilty and culpable of the Crimes of Treason, Leasing-making, and Leasing-telling, for which he was detain'd in the Castle of *Edinburgh*, out of which he has now, since the said Verdict, made his Escape; therefore the Lords Commissioners of Justiciary discern and judge the said *Archibald* Earl of *Argyle* to be execute to the Death, demand'd as a Traytor, and to underly the Pains of Treason, and other Punishments appointed by the Laws of this Kingdoms, when he shall be apprehended, at such a Time and Place, and in such Manner as his Majesty, in his Royal Pleasure shall think fit to declare and appoint: And his Name, Memory, and Honours to be extinct, and his Arms to be riven forth, and delete out of the Books of Arms, swa that his Posterity may never have Place, nor be able hereafter to bruck or joyse any Honours, Offices, Titles, or Dignities within this Realm, in Time coming, and to have forefaulted, amitted, and tint all and sundry his Lands, Tenements, annual Rents, Offices, Titles, Dignities, Tacks, Steedings, Rowmes, Possessions, Goods, and Geeze whatsoever pertaining to him, to our Sovereign Lord, to remain perpetually with his Highness in Property. — Which was pronounc'd for Doom, the 22d of December 1681.

After the Reading and Publishing whereof, the Earl's Coat of Arms, by Order of the Court, was also torn and ranvers'd, both in the Court and at the Market-Cross.

The End of the Second Volume.